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First Session—Twenty-seventh Parliament

1966-67

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 1-44

First Proceedings on Bill S-9,

intituled: "An Act to revise the Interpretation Act and Amendments thereto, and to effect certain consequential amendments to the Canada Evidence Act and the Bills of Exchange Act".

WEDNESDAY, MARCH 2nd, 1966 -67

APRIL

WITNESS:

Department of Justice: **D. S. Thorson**, Assistant Deputy Minister,
Legislation Section.

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OTTAWA, 1966

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien(<i>Bedford</i>)	Haig	Pouliot
Beaubien(<i>Provencher</i>)	Hayden	Power
Blois	Hugessen	Reid
Burchill	Irvine	Roebuck
Choquette	Isnor	Smith(<i>Queens-</i> <i>Shelburne</i>)
Cook	Kinley	Taylor
Crerar	Lang	Thorvaldson
Croll	Leonard	Vaillancourt
Davies	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McKeen	White
Ferguson	McLean	Willis
Flynn	Molson	Woodrow—(47)
Gélinas	O'Leary (<i>Carleton</i>)	

Ex Officio members: Brooks, and Connolly (*Ottawa West*).

(Quorum 9)



ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, March 1st, 1966:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Macdonald, P.C., seconded by the Honourable Senator Bourget, for the second reading of the Bill S-9, intituled: "An Act to revise and consolidate the Interpretation Act and Amendments thereto, and to effect certain consequential amendments to the Canada Evidence Act and the Bills of Exchange Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macdonald, P.C., moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 2nd, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Blois, Burchill, Cook, Croll, Fergusson, Flynn, Gershaw, Haig, Irvine, Isnor, Kinley, Macdonald (*Brantford*), Pearson, Pouliot, Reid, Roebuck, Taylor, Thorvaldson and Yuzyk. (20).

On Motion of the Honourable Senator Croll it was RESOLVED to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-9.

Bill S-9, "An Act to revise the Interpretation Act and Amendments thereto, and to effect certain consequential amendments to the Canada Evidence Act and the Bills of Exchange Act" was explained to the Committee by the following witness:

Justice Department:

D. S. Thorson, Assistant Deputy Minister, Legislation Section.

On Motion of the Honourable Senator Roebuck it was RESOLVED that a sub-committee be constituted by the Chairman with the original number of seven (7), with power in the Chairman to add, to study the Bill and report back to this Committee with all due speed.

At 10.25 a.m. the Committee adjourned to the call of the Chairman.

Attest:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, March 2, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill S-9, to receive and consolidate the Interpretation Act and amendments thereto, and to effect certain consequential amendments to the Canada Evidence Act and the Bills of Exchange Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: I call the meeting to order. We have before us Bill S-9, and I think this is an important piece of legislation that should be reported.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: We have here this morning Mr. D. S. Thorson from the Department of Justice, and I thought that he might in a general way tell us how this thing grew into Bill S-9, and not make an itemized explanation of the various sections, because later the committee might desire to have the initial work on it done by a smaller and subcommittee, so I thought we might hear Mr. Thorson first and then decide how we are going to deal with it from there on.

Senator POULIOT: Mr. Chairman, before Mr. Thorson starts, I would like to know if the Commission for the Revision of Statutes has been appointed, and if it has started its work.

Mr. D. S. Thorson, Assistant Deputy Minister, Department of Justice: Yes, sir, I can answer that. They have been appointed and they have commenced their work. In fact, the work has progressed to a fairly advanced stage.

Senator ROEBUCK: How long have they been working?

Senator POULIOT: When were they appointed?

Mr. THORSON: I believe, about a year ago. My memory is not too strong on this point, senator, but I think it was about a year ago. We have now appointed the staff for the work of the commission, and the staff is proceeding with the initial stage of the statute revision, which is to have all the statutes in a pasted-up form that includes all the amendments over the last 14 years.

Senator POULIOT: I regret to disagree with you, but they could not have been appointed a year ago because the bill stood for a year on the Order Paper before having second reading. However, who are the commissioners, and where are they from? Can you say that from memory?

Mr. THORSON: I will try. There is the Minister of Justice, who is an *ex officio* member of the commission; the Deputy Minister of Justice, Mr. E. A. Driedger; the Associate Deputy Minister of Justice, Mr. Rodrigue Bédard; myself; Mr. Jean Miquelon, the Deputy Registrar General; and Mr. James W. Ryan of the Department of Justice, one of our senior advisory counsel.

Senator POULIOT: It is departmental work, being done entirely within the department?

Mr. THORSON: Yes, very definitely so. It is being done within the department, in the manner I have indicated.

Senator POULIOT: There are no outsiders on the commission?

Mr. THORSON: No, that is right, sir.

I am sorry, but I am really not quite sure of the date of the appointments. The staff appointments were made last fall.

Senator MACDONALD (*Brantford*): Yes; there are none less than a year.

Mr. THORSON: Yes, perhaps so.

I am sorry, Mr. Chairman, that I have not prepared anything in the way of a general statement on the Interpretation Act.

The CHAIRMAN: All I was going to say to preface as a statement was that we had a word that for some time was in general use, called "escalation". There is a new one now, which I will use, in reference to what Mr. Thorson might say. He might point out the guidelines he followed.

Senator KINLEY: Is this bill a production of that commission?

Mr. THORSON: No, sir. This is a bill prepared within the Department of Justice. We have been working on this bill over a number of years. You may recall that it was first introduced in 1962 in the Senate, and never proceeded through the House of Commons. It was again introduced in May or June of last summer, but again its progress through Parliament was interrupted through dissolution.

The Interpretation Act, as I believe Senator Macdonald pointed out in his remarks on the introduction of this measure last summer, was the very first statute enacted by the Parliament of Canada in 1867. It appears as Chapter 1 of the Statutes of Canada of 1867, which as Senator Macdonald noted was an indication of the importance that the Parliament of the day attached to a measure of this kind. It has not really been revised since that time.

While it is true that over the course of the years and throughout successive statute revisions, amendments have been made to the act and have been incorporated in a consolidated form, it is none the less true that this is the first general restatement of the act since 1867.

As might be expected in an age when the statute law is becoming increasingly important and is intruding—that is not the best word, but I will use it—into all of our lives to a much greater extent than in earlier years, the importance of a statute such as this, I think, has increased.

Over the years we have discovered shortcomings in the act. Some of these have been resolved by a general acceptance on the part of the courts of what a particular expression used in a statute means. In some cases the shortcomings, the omissions in the act, have been remedied by judicial interpretation. Certainly over the years we in the Department of Justice have been aware that the act does not deal adequately with a number of matters. As a result, Mr. Driedger, the now Deputy Minister of Justice, decided some years ago to try to restate the Interpretation Act, incorporating into the act the provisions that should be included having regard to past judicial interpretations, and problems that have arisen in regard to the interpretation and the drafting of statutes over the years. He began this process about 1955, and we have been proceeding with it ever since.

Each year we add a little more to the bill. Some of us in the department think that now is a very good time to stop this process and see if we can get the bill enacted, otherwise it will develop to an appalling length.

I know I have sometimes been accused by my colleagues in the department of trying to get so much into the Interpretation Act that we will be able to write statutes by code numbers in the future. However, I do not think this is really very likely.

The CHAIRMAN: You mean, for instance, No. 007?

Mr. THORSON: Yes.

Senator POULIOT: Will you permit a question, Mr. Chairman? I wonder if this bill is complete and if it contains the definitions of the terms in the statute book?

Mr. THORSON: Oh, indeed not, sir. Almost every statute, as you know, requires its own Interpretation section.

I should explain at the outset that this is a statute that is intended to be applicable to the interpretation of the statutes generally. That is to say, we do not attempt to define all the terms that might appear in particular statutes. We are only interested, in this statute, in providing general rules and in providing definitions of terms that appear frequently in the statutes, where it would be inconvenient and, indeed, ridiculous, perhaps, to attempt to define the same terms over and over again. The statutes almost always have, and I would expect always will continue to have, their own definition sections which give meaning to expressions used in them. This bill is concerned with the construction of statutes generally.

Senator POULIOT: Let us take the human rights bill, for instance; there is no definition of liberty in it.

Mr. THORSON: No.

Senator POULIOT: Why do you not put a definition of liberty in the Interpretation Act, since there is none in the other act?

Mr. THORSON: I would suspect that it is beyond the ingenuity of any draftsman to define freedom or liberty.

Senator POULIOT: There are many omissions in this act, as there are in all interpretation acts on the statute books, and you will agree with that?

Mr. THORSON: Indeed I do, sir, very readily.

Senator POULIOT: The department has been looking at this bill for years. I wonder why it is not complete.

Mr. THORSON: Senator, I doubt that an Interpretation Act could ever be complete in the sense you are suggesting. This is not a dictionary. Perhaps that is where I should start. We are not intending to define all the terms employed generally or in particular cases in the Statutes of Canada. That would be an impossible task. It would take literally hundreds of pages even to attempt it; and I suggest that such an attempt would be foolhardy. For instance, you have mentioned some terms that I would think are obviously incapable of definition. They must bear the meaning that a reasonable man would give to them, and that meaning may very well vary over the years.

We are attempting to take some of the more commonly employed terms that are used in the statute law over and over again; and in order to avoid having to define the term in each and every statute where the expression is used, we fall back on the device of an Interpretation Act which provides a definition.

Let us take a definition at random. In this act we define, for instance, the term "holiday." That is a definition of general application. You may well have a particular statute—one that occurs to me is the Bills of Exchange Act, another I believe is the Labour Standards Code—where the same word will also be defined in the particular act, but given a special meaning in the context of that act—

Senator POULIOT: My understanding is that when any word has several meanings and it is used in a piece of legislation, the purpose of the Interpretation Act is to tell what is the meaning of that word in that very statute. Am I right?

The CHAIRMAN: Unless in that particular statute there is a special definition.

Senator POULIOT: The same word cannot have two meanings in the same statute, only one, and the purpose of the Interpretation Act is to say what the meaning of it is. Do you agree with that?

Mr. THORSON: I do not think I would agree as far as the Interpretation Act is concerned. You may well have a word that is capable of a number of meanings used in a particular statute, but in that particular statute you may find there is a special definition section applicable only to that enactment.

Senator POULIOT: When there is a difference in the use in the interpretation of the same word in two statutes, in the Interpretation Act and in the other special interpretation in the particular act, which one does prevail?

Mr. THORSON: In that case the special act would always govern.

Senator POULIOT: Are you sure of that?

Mr. THORSON: Yes.

Senator POULIOT: What is the use of having a general interpretation act if it is the interpretation in the special act which prevails?

Mr. THORSON: To give meaning to terms that are used without definition in the statute law generally. Many terms are used without definition. Such terms as "holiday," and "commonwealth country." What do we mean by those terms? What do we mean by the term "Governor in Council"? Where is that term defined? We use it over and over again in the statute law, as you know. Now, what meaning is to be given to it, since we do not define it in the particular acts. Similarly, we do not set out all of the various rules of construction and interpretation of statutes that have been laid down by Parliament in the past, or laid down by the courts in the past, in each and every statute that Parliament enacts. These are dealt with in an interpretation act and they are intended only to apply where the context of the particular act does not otherwise require.

Senator POULIOT: You mean in the particular act, in the special interpretation—you mean the meaning of the word according to the interpretation section of the particular act?

Mr. THORSON: Yes, that would govern. Where a word is defined in a particular enactment that definition would apply and would govern. In the event of any conflict between that definition and the Interpretation Act, the particular definition would govern in each case.

Senator POULIOT: I have a last question to ask you on this point. It is that when the word is not defined, an expression which is not defined or interpreted in the general act that we have now before us, nor in the particular act, which deals with a special matter, then the only thing to do is to have recourse to the dictionary?

Mr. THORSON: Absolutely.

Senator POULIOT: To Webster?

Mr. THORSON: Absolutely, in the first instance. It may be that there are some exceptions to the rule. For instance, technical words may well be given a special meaning that is not necessarily a dictionary meaning, but there is no doubt about it that otherwise you fall back on the ordinary rule of construction, which says that words in an enactment are to be given their ordinary dictionary meaning in the absence of a special provision.

Senator POULIOT: As you know very well, there are thousands of special words which have several meanings and different meanings, and so the purpose of the interpretation section in the particular act is to tell the reader what is the meaning of the word in that act?

Mr. THORSON: That is so, sir.

Senator POULIOT: And there can be only one meaning for the same word in that act, and then with regard to these other words which are not included in the interpretation section, we have recourse to the dictionary?

Mr. THORSON: Yes.

Senator POULIOT: Then what is the use of the Interpretation Act?

Mr. THORSON: Again, to deal with terms that are not defined in the particular enactment where there may be some doubt as to the meaning of the terms. When we get to particular definitions, I can perhaps illustrate that. Take the term "Governor in Council"—it is used in virtually every statute. That has not a dictionary meaning, you cannot find the expression in the dictionary, yet it is obviously not the sort of expression that should or would be defined in each and every statute where it is used. This is to provide that kind of general definition. The Interpretation Act is really a specialized dictionary, provided specially for the purposes of the interpretation and construction of the statutes of Canada.

Senator POULIOT: You will agree that in the Bill of Rights there are many words like "liberty" and "freedom", to define which it seems impossible?

Mr. THORSON: I do, indeed.

Senator POULIOT: Now they have all those words and nobody knows what they mean. Do you not think that it would have been proper to define those words "freedom" and "liberty" and have them in the interpretation book?

Mr. THORSON: I do not know whether we are getting really beyond the scope of this act. I do feel that some terms are difficult if not impossible to reduce to a brief, concise statement of meaning. I can think of many such expressions. You mentioned the Bill of Rights a moment ago. In that act there is an expression "due process of law". I believe that is so—is it not, Senator Thorvaldson—the provision whereby a person is not to be deprived of his life or liberty except by "due process of law."

Senator THORVALDSON: Yes.

Mr. THORSON: That very short expression, four words, "due process of law" is one that has engaged the attention of the courts—most particularly in the United States where it appears as part of the Constitution—for almost 200 years. If you look to Corpus Juris, the great work of jurisprudence in the United States, you will see that literally hundreds of pages are devoted to the meaning of that expression. That is why I say there are some words and some expressions which are incapable of definition in any interpretation act. It just could not be done.

Senator POULIOT: There is where the Department of Justice can render a great public service to the Canadian people, by defining such words as "liberty" and "freedom" and "human rights," which everybody uses and nobody knows.

The CHAIRMAN: Except that on some of this you might be putting a word in a strait jacket. For example, is not "freedom" something that possibly is enlarging and possibly getting smaller, dependent on a lot of considerations?

Senator POULIOT: This is a guide line to interpretation of the statute book and there should not be conflict in that. There should be a clear definition.

The CHAIRMAN: I do not think it is a guide line for all the statutes of Canada, because many of the statutes of Canada write their own definitions.

Senator POULIOT: It should be made to have an understanding and a meaning, and what the law maker has in his mind when he adopts such a definition. Thank you, Mr. Thorson.

Senator BURCHILL: I should like to ask Mr. Thorson, in his experience, as a lawyer, is the Interpretation Act referred to or made use of much in that profession?

Mr. THORSON: Yes. Less, I would say, in the sense you may be thinking of then in the following sense. The Interpretation Act is employed constantly in the formation of law, so much so that it has come to be taken for granted, generally by the legal profession and by the courts, that when you use certain expressions, when you include in a statute a particular provision, that expression has a particular defined meaning. Therefore, I think it is fair to say that even if the Interpretation Act is not very often referred to in pleadings in court actions, nonetheless the judges, because of their training in the law, and lawyers, also for the same reason, regularly construe the law in accordance with the commonly understood rules set out in the Interpretation Act.

Senator ROEBUCK: You do not have to plead it, because it is a principle of law that it is notice, to be recognized by the court.

Mr. THORSON: Yes. For example, take the rule that says where a person is appointed to a public office, the appointment is construed to be an appointment during pleasure, unless some other tenure of office is stipulated—that is taken for granted, generally. It does not have to be stated each time.

The CHAIRMAN: Are there any other general questions?

Senator ROEBUCK: I would like to know how many of the definitions in the former act are omitted in the present act. I do not mean the exact number, but have you omitted definitions in the revision?

Mr. THORSON: I believe we have omitted some, but I would like to look and make a detailed comparison before giving you the answer. Where we have omitted definitions and provisions that are now in the existing Interpretation Act, it is because we have thought that we have covered the same point in another way, perhaps in this bill. We have taken many of the existing provisions of the Interpretation Act and restated them. While they do not appear in exactly the same form, they are there in substance.

Senator ROEBUCK: So that you actually change the statutes? The statutes were drawn in accordance with the old definition: you have put a new meaning on it?

Mr. THORSON: We think not. We have been very careful to avoid that result. I would agree it would be quite appalling if by a subsequent interpretation act, in the year 1966, we were to change the meaning intended to be given to expressions by Parliament 30, 40 or even 80 years ago. That would be appalling.

Senator ROEBUCK: That was one thing that appalled us when we saw the act, the possibility of your changing the meaning.

Mr. THORSON: We do not think we have done that. We have added new definitions where they were thought to be useful, but where there were existing definitions which depended upon the Interpretation Act I do not believe we have changed them.

Senator ROEBUCK: Have you not rewritten some of these clauses?

Mr. THORSON: We have certainly restated some of the rules of interpretation, but I do not think we have changed, in the sense that you mean, definitions on which Parliament must be presumed to have previously relied.

Senator ROEBUCK: Would it be possible for you to tell us the acts in which any particular rule or interpretation, either present or past, has been applied? Have you gone that far?

Mr. THORSON: Sir, I do not think that would be possible, really. You would have to take each and every statute of Canada and analyze it as to whether or not a particular provision could possibly be said to apply, or might apply, or did apply.

Senator ROEBUCK: So, if there is any definition, or redrawn definition, in which there is a doubt as to whether you have changed the meaning you would not be able to tell us the statutes which would be affected?

Mr. THORSON: No, but I do not think there are any cases where we have changed the meaning—

Senator ROEBUCK: But there may be some cases in which we may find there is some doubt when we get down to business. I just wanted to know.

The CHAIRMAN: Do you mean that the new language may introduce variations?

Senator ROEBUCK: Yes, and I am asking only whether you have that information, because we are not going into it now. Did you, in your work of redrafting, go so far as to read the statutes to see which ones would be affected, if this does make a change?

Mr. THORSON: No, sir, we did not do that, but in drafting these new definitions, and in any case where we were restating a rule which had previously been in the Interpretation Act in another form, we were very much aware—or, at least, we tried to be aware—of the statutes in which this might create a difficulty, and where there was a difficulty the decision was to avoid any restatement for precisely the reason you mentioned.

The CHAIRMAN: Senator ISNOR?

Senator ISNOR: I might mention that I am not a lawyer, but before we get into the bill proper may I enquire from Mr. Thorson as to whether he received a copy of the brief presented by Mr. G. F. Maclaren?

Mr. THORSON: Yes, sir, I did.

Senator ISNOR: Would you care to comment in regard to the last paragraph in the second memorandum, which concerns explanatory statements?

Mr. THORSON: Would that be the last paragraph on the last page?

Senator ISNOR: Yes, the last paragraph on page 4, Mr. Thorson.

Senator ROEBUCK: He sent us two briefs.

Senator ISNOR: Yes, I am referring to Memorandum No. 2.

Senator ROEBUCK: That is the one that applied in 1965.

Mr. THORSON: The point that Mr. Maclaren is making there, as I understand it, is that explanatory matter included in bills, and statements made by a minister in exposition or explanation of a statute in Parliament, should be admissible in evidence towards the construction of that statute. There are, of course, jurisdictions where this is the rule. It is not the rule in Canada. This is a matter of the law of evidence, and this act does not attempt to amend the law of evidence. That is not its function.

Again, if we were to include such a provision we would be changing the substance of the law by a means which I think would be quite objectionable—that is, in the guise of an interpretation act.

Senator ISNOR: Why do you print an explanation in nearly all of your bills? Almost any bill has an explanation of the particular clause to which it refers.

Mr. THORSON: That is done solely for the purpose of facilitating an understanding of its clauses by members of the House of Commons and members of the Senate. It is designed merely as an aid to the person who is reading the bill.

The CHAIRMAN: I would think the explanatory notes are intended to indicate what the legislation is attempting to get at, but as I have said many times in dealing with bills there is no guarantee until the courts interpret the statute that the statute has accomplished the purpose that appears in the explanation.

Mr. THORSON: Indeed, if I might add to that, Mr. Chairman, the draftsman may well have one view of what he thinks he is saying, but what he thinks he is saying and what the act says he is saying may well be two different things.

The CHAIRMAN: The proof of that is that we have amendments coming in every year to bills which were thought to achieve a certain purpose, and the explanation in the amending bill is usually to the effect that there was a loophole, or that the original act went too far, or did not go far enough.

Senator THORVALDSON: There may be an amendment later on which goes completely contrary to the intention expressed by the minister when he introduced the legislation.

The CHAIRMAN: That is right.

Senator THORVALDSON: Also it seems to me from a practical point of view that the suggestion of Mr. MacLaren would make the task of the lawyer hopeless in every case. If, for instance, the date of the statute was 1875, then every lawyer everywhere would have to obtain *Hansard* of that year and read through hundreds of pages, perhaps, in order to find out what the minister said about it. All sorts of things suggest to me that it would be entirely impractical.

The CHAIRMAN: I remember years ago when we were considering the right to manufacture margarine in Canada we had to look at the statute which prohibited the importation, manufacture and sale of margarine. The recital in that statute said that margarine was a deleterious article of food because it was made from dead horses and dead animals. When we were before the Privy Council the Department of Justice attempted to argue—and this was in 1951 or 1952—that the court was still bound by that recital in the statute of 1885. Of course, they did not pay any attention to that argument. My point is: What is the value of a recital?

Senator FERGUSON: May I ask Mr. Thorson a question? He said there are some countries in which the consideration of a minister's statement is permitted. Can he tell us what countries they are?

Mr. THORSON: It is risky to do that from memory, but I believe there are some jurisdictions in the United States where this kind of evidence is admissible towards resolving any possible ambiguity in meaning.

The CHAIRMAN: Do you mean some of the States?

Mr. THORSON: Yes.

Senator THORVALDSON: What are you referring to? Recitals?

Mr. THORSON: No, statements which have been given and background material in what we would call royal commission reports. For example, the proceedings and recommendations of a commission of inquiry—the kind of thing that we in Canada would call a royal commission report—can be used in some jurisdictions in the United States as evidence for the purpose of determining what the defect or mischief in the law was that Congress or the state legislature was purporting to rectify.

This is really the rule in *Hayden's* case taken a little further than in Canada.

Senator FLYNN: Are you sure we cannot do it in Canada?

Mr. THORSON: In certain circumstances, sir, evidence before royal commissions and the reports of royal commissions can be adduced, but they are rather rare circumstances. It happens really only in the area of the so-called mischief

rule, which is a technical rule of construction of statutes known as the rule in *Hayden's* case. It is in this area that sometimes that sort of evidence has been ruled admissible. The circumstances generally are those where the legislation may recite the state of the ill that existed, and that the legislation is designed to rectify.

Senator FLYNN: I understood that where you have an act which is based on some recent decision of the courts, or some events that have taken place, and somebody has published a comment about the legislation, then that comment is very often taken into consideration by the courts in interpreting the statute.

Mr. THORSON: There is one example of fairly recent memory that occurs to me, namely, the Maritime Transportation Unions Trustees legislation. In that act you may recall there was a recital dealing with the state of affairs in the maritime transportation unions. With respect to that act I am reasonably satisfied that the courts would look behind it to find out what it was that Parliament was getting at, should any question have arisen concerning its constitutionality.

Senator FLYNN: Facts are taken into consideration, but not the comments made in the legislature.

Mr. THORSON: Yes; not the opinions themselves and not any statement that may have been made by a minister.

Senator KINLEY: Mr. Chairman, in the course of business I have discovered how important it is to read the interpretation section of an act before you read anything else. The interpretation section is quite vital to the statute. I think Mr. Thorson made the statement that it is always the interpretation section of an act that applies as against this general Interpretation Act. Is that true?

Mr. THORSON: That would be so wherever there was any contradiction between the two.

Senator KINLEY: I recall consulting my solicitor in respect to the registering of a mechanic's lien on a ship. He called me back and said: "You cannot do that because it can only refer to land. I have been looking at it, and I have consulted other counsel and they say it is only in respect of land." I said, "Why don't you read the Interpretation clause", and he read it and he found that land meant ships and land meant anything, and we were all astray until one read the description of land in that act. The interpretation is so important.

The CHAIRMAN: Any further questions?

Senator ROEBUCK: There is one question. Have you left out any of the old act? What if anything is actually omitted from the new act?

Mr. THORSON: I don't think any provision that I might call substantive has been left out. I would not want to assert that we have incorporated literally everything from the old act because we have not done that. We have taken some of the former provisions and restated them and rearranged them in the act generally in a manner which we hope will make it more readable.

Senator ROEBUCK: Mr. Chairman, you will remember that when this came before us originally there was a suggestion made that we would not endeavour to examine this in minute detail in the general committee, but rather that a smaller committee would be appointed as was done in the case of the Criminal Code.

The CHAIRMAN: Yes, and in the case of the Companies Act and the bankruptcy legislation.

Senator ROEBUCK: Yes, because it was felt that the few who are appointed to examine it would be able to devote more time than the whole committee might be able to devote to it. I think it is fairly well the general opinion among the members of the committee that that is what we should do in this case.

Senator KINLEY: It is important that we have a brief from important sources like outside legal authorities such as the Canadian Bar Association or some group of lawyers like that.

The CHAIRMAN: As you will recall when we were dealing with the Companies Act we appointed a subcommittee, and that subcommittee made a complete examination and reported to the main committee, but the main committee heard all the evidence; all representations and briefs were presented to the main committee.

Senator KINLEY: I think it is more important for us who are lay members of the committee to hear what lawyers and other people have to say about the act generally.

Senator ROEBUCK: The meetings of the subcommittee would, of course, be open.

Senator KINLEY: But would you hear representations before the subcommittee?

Senator FLYNN: Would the meetings of the subcommittee be in the reports?

Senator KINLEY: The senator who spoke last night made some good criticisms. He pointed out that the description of the British Commonwealth was rather evasive and difficult to describe without an Interpretation Act.

The CHAIRMAN: There are two ways of proceeding. We can proceed as a general body in this committee, and we can invite comment from law societies or anybody else who wants to make submissions. After that we can appoint a subcommittee to deal with the bill item by item and consider the drafting, and so on. On the other hand we can have the subcommittee function first and examine the bill, and then the main committee can hear such special representations as are made and obtain the viewpoint of the department on what the subcommittee has produced.

Senator COOK: It seems to me that the subcommittee should be appointed after we have heard all representations.

Senator ROEBUCK: Yes, but then there is the problem that when you get some person here to speak on a very detailed bill as this one is, you may not have the information on each item which you would want to have and which would be of great help. Also you may not be aware of the points upon which you would want that person to comment. For that reason I think it would be better to have a detailed examination made first, and a report submitted to the general committee before you have a general examination of the bill by the whole committee and the cross-questioning of witnesses.

The CHAIRMAN: If we are going to have the hearings first, the first thing is to go through the bill section by section with the departmental officers and then hear any special representations, and then appoint a subcommittee to go through the bill.

Senator THORVALDSON: Would it not be preferable to have the representations first?

The CHAIRMAN: Ordinarily I prefer to hear submissions and representations first, but this is a particular type of bill. So the question arises whether we should have an analysis by the subcommittee at the meetings with the departmental officers and whether this would be useful or not.

Senator THORVALDSON: Have some organizations requested an opportunity to be present?

The CHAIRMAN: This bill has been in the public eye for a number of years and no requests have been made to make representations to the committee. A brief has been submitted by Mr. Maclaren.

Senator ROEBUCK: Yes, but he says he does not want to make representations.

Senator KINLEY: He said also that every member of the committee knows this, and he is a very good lawyer.

The CHAIRMAN: It is really up to the committee to decide which method it wishes to follow. It would appear that we may not have any outside representations at all. We have had no indications of any. In those circumstances should not some of us get as fully informed as possible and examine the whole thing first of all?

Senator THORVALDSON: I would be ready to accept a recommendation from the chairman. What would you recommend?

The CHAIRMAN: I doubt if we will have any public representations, and I would like to get to the root of the matter right away.

Senator MACDONALD (*Brantford*): Could the committee appoint a subcommittee now to go into the bill and then report back to the main committee which could refer certain matters back to the subcommittee again if necessary?

The CHAIRMAN: That is what Senator Roebuck was proposing. The question is whether the subcommittee should be appointed before or after we hear public representations, if there are any. I shall be surprised if in this case there are any public representations. For that reason I would suggest that we get down to the matter right away.

Senator MACDONALD (*Brantford*): I would suggest that we have an examination by a subcommittee first, and then by the main committee and then we can refer it back if necessary.

Senator KINLEY: What about this commission appointed to examine the statutes? Would they not have some bearing on this matter?

The CHAIRMAN: They will not be making any new laws. They will simply be consolidating the existing law.

Senator FLYNN: With all due respect I think we have given the commission power to make new laws.

The CHAIRMAN: If I thought they had such power I would come up with some recommendations myself.

Senator ROEBUCK: I will make that motion now so that we can get down to business. I move that a subcommittee be appointed to study the proposed act in detail and to report back to the main committee.

The CHAIRMAN: What about doing it the way it was done last time? The chairman was instructed to designate the members of the subcommittee with power to add from time to time.

Senator ROEBUCK: I would be perfectly satisfied to allow the chairman to name a committee.

The CHAIRMAN: I would suggest maybe seven members to serve on the subcommittee at the beginning, with power to add if necessary, for at times there are certain people who find that they cannot be present at all meetings. Then, of course, someone else can be invited to participate.

Senator THORVALDSON: I would leave it to the chairman to nominate the subcommittee.

Senator ROEBUCK: I will add to my motion that the personnel be named by the chairman.

Senator MACDONALD (*Brantford*): Mr. Chairman, I think that if seven people are appointed they should be under an obligation to attend. I do not see how one can drop out one day and somebody take his place. It is a continuous problem, and you might get right in the middle of some discussion.

The CHAIRMAN: Senator, looking at a statute like this it is not really like reading a novel, where you have to keep the continuity in mind. You are dealing with individual sections. If you look at a certain item in this bill it poses particular problems, and there is no continuity from that into the next item. Each item you have to consider on its own, and go back and see what the present statute contains and see if there are any differences, and invite comment.

Senator ROEBUCK: That will be very much so in this case.

The CHAIRMAN: It has worked out well in the past, and only on one or two occasions was it necessary to have a substitution.

Senator THORVALDSON: Every clause is a separate matter.

The CHAIRMAN: Every clause is a statute on its own.

We have a motion by Senator Roebuck and seconded by Senator Isnor that a subcommittee be constituted by the chairman with the original number of seven, with power in the chairman to add, to study the bill and report back to this committee with all due speed. Those in favour? Contrary?

Hon. Senators: Carried.

Senator POULIOT: Before we adjourn, I would like to ask a question of Mr. Thorson. Does Mr. Wershof come under the Department of Justice or the Department of External Affairs?

Mr. THORSON: The Department of External Affairs, sir.

Senator POULIOT: How is it that he is a legal officer in the Department of External Affairs and does not come under the Department of Justice?

Mr. THORSON: There are a good many persons in the public service employed in a legal capacity who are not members of the Department of Justice. Some departments have entirely separate legal sections, such as the Department of National Revenue and the Judge Advocate General. External Affairs is a further example, and there are some others too.

Senator POULIOT: Would it be possible to have a list of the civil servants who are described as legal officers who come, on the one hand, under the Department of Justice and, on the other hand, under each department concerned?

Mr. THORSON: I am sure a list like that could be developed, yes.

Senator POULIOT: Thank you. I will ask a question in the Senate.

The CHAIRMAN: Thank you.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 2

Complete Proceedings on the Bill S-14,
intituled: "An Act to amend the Bills of Exchange Act"

WEDNESDAY, MARCH 9, 1966

WITNESS:

Department of Finance: C. F. Elderkin,
Inspector General of Banks.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	Paterson
Aseltine	Gouin	Pearson
Baird	Haig	Pouliot
Beaubien (<i>Bedford</i>)	Hayden	Power
Beaubien (<i>Provencher</i>)	Huggessen	Reid
Benidickson	Irvine	Roebuck
Blois	Isnor	Smith (<i>Queens-</i> <i>Shelburne</i>)
Burchill	Kinley	Taylor
Choquette	Lang	Thorvaldson
Cook	Leonard	Vaillancourt
Crerar	Macdonald (<i>Cape Breton</i>)	Vien
Croll	Macdonald (<i>Brantford</i>)	Walker
Davis	McCutcheon	White
Dessureault	McKeen	Willis
Ferris	McLean	Woodrow—(50)
Fergusson	Molson	
Flynn	O'Leary (<i>Carleton</i>)	
Gélinas		

Ex Officio members: Brooks, and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 2nd, 1966:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Cook, seconded by the Honourable Senator Burchill, for the second reading of the Bill S-14, intituled: "An Act to amend the Bills of Exchange Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Burchill, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 9th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (Chairman), Aird, Aseltine, Baird, Blois, Burchill, Croll, Fergusson, Gershaw, Haig, Irvine, Isnor, Kinley, Leonard, Pearson, Reid, Taylor and Walker. (18)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill S-14, "An Act to amend the Bills of Exchange Act" was read and examined.

On motion of the Honourable Senator Croll it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill S-14.

The following witness was heard:

Department of Finance: C. F. Elderkin, Inspector General of Banks.

It was Moved by the Honourable Senator Isnor that line 18, on page 2 be amended,

It was Moved by the Honourable Senator Haig that a new clause 3 be added to the Bill.

On Motion of the Honourable Senator Croll it was RESOLVED that the Bill be reported with the following amendments:

1. Page 2, line 18: After "thanksgiving" insert "throughout Canada".
2. Immediately after clause 2, add the following as clause 3: "3 Sections 113 and 114 of the said Act are repealed and the following substituted therefor:

113. Where an inland bill has been dishonoured, it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment as the case may be; but it is not necessary to note or protest an inland bill in order to have recourse against the drawer or endorser.

114. Where a bill does not on the face of it appear to be a foreign bill, protest thereof in case of dishonour is unnecessary.

At 9.55 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, 9th March, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-14, intituled: "An Act to amend the Bills of Exchange Act", has in obedience to the order of reference of March 2nd, 1966, examined the said Bill and now reports the same with the following amendments:

1. *Page 2, line 18*: After "thanksgiving" insert "throughout Canada".
2. *Page 2*: Immediately after clause 2, add the following as clause 3:

"3. Sections 113 and 114 of the said Act are repealed and the following substituted therefor:

113. When an inland bill has been dishonoured, it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment as the case may be; but it is not necessary to note or protest an inland bill in order to have recourse against the drawer or endorsers.

114. Where a bill does not on the face of it appear to be a foreign bill, protest thereof in case of dishonour is unnecessary.

All which is respectfully submitted.

Salter A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, March 9, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill S-14, to amend the Bills of Exchange Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Honourable senators, I call the meeting to order. We have Bill S-14 before us this morning. It is a rather important bill, originating in the Senate. I suggest we print the usual number of copies of our proceedings.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Honourable senators, Mr. C. F. Elderkin, Inspector General of Banks, is here this morning to deal with the bill. A memorandum has been distributed, indicating that two additional amendments are requested by the minister. We will deal with those as we go through the bill.

Mr. Elderkin, would you explain the purpose of the amendments which appear in the bill and then we will deal with the additional amendments proposed in the memorandum.

Senator REID: Could we have some explanation of the bill?

The CHAIRMAN: Yes. Would you give an explanation, Mr. Elderkin.

Mr. C. F. Elderkin, Inspector General of Banks, Department of Finance: Mr. Chairman and honourable senators, the first item under clause 1 is a clause which, as is indicated in the explanatory notes, would enable a drawee to pay cheques on a Saturday or non-judicial day on which the drawee is open for business. Under the present Bills of Exchange Act, Saturday is not a day on which a bill of exchange can be paid.

Senator REID: Does this apply to banks?

Mr. ELDERKIN: Entirely to banks.

Senator REID: But anyone may go into a store and cash a cheque on a Saturday?

Mr. ELDERKIN: Yes, and a bank will cash a cheque on a Saturday if it is open; but this clause particularly applies to notes which may become due. This is to relieve the banks of that restriction, so that they may treat Saturday as a business day. There are two reasons for this. One of them is that now, under the Canada Labour (Standards) Code, you may get a situation where a bank would have to close on a Monday and possibly on the Tuesday as well, in which case they may have to open on the previous Saturday in order to stay within the three days' limit normally considered for the Bills of Exchange Act because of

the days of grace. This is a provision to permit them to do business on a Saturday or any other business day.

Senator BURCHILL: Were there any prohibitions against doing that in the original Bills of Exchange Act?

Mr. ELDERKIN: The bill made Saturday a non-judicial day or rather a holiday for the purpose of the act because of the situation which arose when banks closed on Saturday at the introduction of the five-day week.

Senator BURCHILL: This occurred in 1956, I think. Is that correct?

Mr. ELDERKIN: 1955 or 1956.

Senator CROLL: It was after the revision of the Bank Act in 1955.

Senator BAIRD: But now they close late on Friday afternoon and that takes care of the business they would normally do on a Saturday morning. Have they only certain hours of operation? Are they tied down to a limit of so many hours a week?

Mr. ELDERKIN: No, they may open or close as they see fit, but this is a question where in some cases they were restricted under the present Bills of Exchange Act from meeting bills which became due on certain days.

The CHAIRMAN: All right. That is section 1, subsection 3.

Mr. ELDERKIN: Subsection 4 is an entirely new one, and it arose partially from the provisions of the Canada Labour (Standards) Code. For instance, one of the provisions in section 26, subsection 2 of the Code may require, if Christmas or New Year's falls on a Saturday or Sunday, that the next business day must be a holiday for the employees. We had a situation last year, for instance, where Christmas fell on Saturday and so you had Saturday and Sunday as holidays, but in many parts of Canada Boxing Day is a holiday too, so therefore you had a situation in which there were three holidays in succession and under the Canada Labour (Standards) Code there had to be a holiday on the Tuesday. This amounted to four days in succession. This is very impractical so far as banks are concerned. They have tried never to remain closed for more than three days in succession.

Senator PEARSON: Do banks open and close subject to local by-laws?

Mr. ELDERKIN: All of them are subject to national holidays, and they are subject to provincial holidays and—

Senator PEARSON: What about municipal holidays?

Mr. ELDERKIN: And they may be subject to municipal holidays. The provisions here are actually designed to try to set up a situation where they never have to stay closed for more than three days at a time. There is another point I would like to make regarding this subsection 4 which is not in the notes, but which I am going to ask to have printed in the notes. There is a practice growing up in some parts of Canada, particularly in agricultural communities, where the banks would prefer to open on Saturday and close on Monday, Saturday being the shopping day for the agricultural community. This provision would permit them to do that. In other words, they may close on the Monday without interfering with the bills of exchange.

Senator BAIRD: All day Monday?

Mr. ELDERKIN: Yes, there is consideration being given to this in the Prairies where Saturday is the main shopping day, and where Monday, from a business point of view, is a dead day. Many of the businesses are closed on Monday in agricultural districts.

Senator KINLEY: Where you get three consecutive holidays, is a bill due the day before or the day after the holiday?

Mr. ELDERKIN: Where it is due on a holiday, it then becomes due the day after.

Senator KINLEY: But if a bill falls due on the holiday, is it due the day before or the day after?

Mr. ELDERKIN: The day after.

Senator KINLEY: And what about cheques?

The CHAIRMAN: The amendment deals with bills of exchange.

Mr. ELDERKIN: The bill does not become due until the day after a legal holiday.

Senator KINLEY: We pay our cheques normally on a Saturday, but we have in fact to issue them on Thursday so that the employees can go to the bank on the Friday to get their money. That is to say we have to pay two days ahead.

Mr. ELDERKIN: Yes, most employers have that situation.

Senator KINLEY: If there should be an intervening holiday we have to issue our cheques in the same way.

Mr. ELDERKIN: You can date the cheques the day before, as the Government does.

The CHAIRMAN: Section 2.

Mr. ELDERKIN: Section 2 has three purposes, as you will notice from the explanatory notes. The first is to remove Easter Monday, which is not a general holiday under the Canada Labour (Standards) Code or in the business community generally, from the list of non-juridical days. When the Code was enacted, Easter Monday was dropped as a general holiday, since it was not a holiday generally in the business community. The awkward situation in the past has been that in some parts of the country at the Easter weekend you had Friday, Saturday, Sunday and Monday, four days, and the banks to meet the situation have been staying open on Saturday during that particular weekend. This is a very awkward situation because in the first place Saturday is not a normal banking business day and the banks stay open only to meet the Bills of Exchange Act. And Monday, as I said before, is not usually a holiday in the business community. This will meet the situation under the Canada Labour (Standards) Code which takes Easter Monday out as a general holiday. The banks will open on Easter Monday but not on Saturday.

Senator KINLEY: Do the stock markets do that? Is the stock market closed on Easter Monday?

Mr. ELDERKIN: I am sorry, I cannot answer that.

Senator LEONARD: Is it possible for the bank to stay open on one of these non-juridical days?

Mr. ELDERKIN: Yes, but they are supposed, under the Canada Labour (Standards) Code, to give their employees a holiday. The banks could legally stay open but they could not legally meet a bill of exchange.

Senator LEONARD: Why have you put in section 1, subsection 3, which provides that the banks stay open on a non-juridical day?

Mr. ELDERKIN: In order to allow them to meet a bill of exchange on a non-juridical day, they can then stay open and meet a bill of exchange.

Senator LEONARD: They are not compelled to close on any of these days?

Mr. ELDERKIN: No. The second part of clause 2 is to remove Victoria Day and Dominion Day from the list of non-juridical days that are to occur the next Monday when the named days fall on a Sunday. This is a cleaning up of the act since these days can no longer fall on a Sunday. With the passage of the Dominion Day Act and the Victoria Day Act, these must fall on a Monday. As I say, this is just cleaning up the act.

The third part is to add the birthday of the Sovereign to the list of non-juridical days that are to occur on the next following Monday when the

birthday falls on a Sunday and no other day is substituted by proclamation. Normally there is a proclamation; there has been for years, but if there is no proclamation made and the birthday fell on a Sunday the holiday would fall on the next following day.

The CHAIRMAN: Any questions on this before we move to the amendments being proposed? You will have before you a single sheet of paper containing the amendments suggested by the department. Will you deal with these, Mr. Elderkin?

Mr. ELDERKIN: The first amendment, which is in line 18 of page 2, simply adds "throughout Canada" to the line. You will note that this did appear in the present bill, but was dropped at first until it was found out that there are occasions on which the Government may proclaim a holiday in a certain area which may not be a general holiday, and, therefore, to cover the situation the draftsmen of the Department of Justice requested that the words "throughout Canada" be restored in this bill.

The CHAIRMAN: Senator Isnor, will you move that amendment, just adding the words "throughout Canada"?

Senator ISNOR: I so move.

The CHAIRMAN: Is the committee in favour?

Hon. SENATORS: Agreed.

Mr. ELDERKIN: The next one, Mr. Chairman, has a bit of history behind it, if I might take a minute of the committee's time. These two sections, 113 and 114, which have been in the Bills of Exchange Act since before the turn of the century, make an exception for the Province of Quebec with respect to the method of dishonouring instruments. In the Province of Quebec today to dishonour an instrument you must file a protest document on it. I am told—and this is simply hearsay—that this arose out of a custom which was prevalent in Lower Canada before Confederation and was continued because of the custom. The late Senator Bouffard asked me to see if this particular exception with regard to the Province of Quebec could not be changed to bring Quebec into line with business customs throughout Canada in all the other provinces.

I should explain that protest in the Province of Quebec is prepared and filed by a notary. The fees that he receives for preparing the filing of a protest were, I think, also set down around the turn of the century. The result is that today this is not only, I was going to say "unpleasant", but also an expensive operation as far as the notary is concerned. So, the first thing we did was to approach La Chambre des Notaires de la Province de Quebec to ask them if they had any objection to making the change proposed here. They had an executive meeting on February 28, and the unanimous opinion of the executive committee was that they were in favour of having the exception taken out of the bill.

The CHAIRMAN: Out of the act.

Mr. ELDERKIN: I am sorry, out of the act. However, to be sure everything was on the right ground, the minister telephoned Premier Lesage yesterday morning and asked his opinion on it, and Premier Lesage was strongly in favour of taking it out of the act as well.

Later in the morning I talked to his parliamentary counsel, who, I understand, is also a practising attorney. So everybody has, from that point of view, been unanimously in favour of taking it out of the act. As I say, this was the late Senator Bouffard's recommendation. The amendments simply put the Province of Quebec on the same basis as all other provinces in Canada as far as dishonouring an unpaid bill of exchange is concerned.

The CHAIRMAN: Are there any questions?

Senator KINLEY: Mr. Chairman, I do not know if this comes under the Bills of Exchange Act, but if you go to a bank and sign a note, in small print there is a note to the effect, "I waive notice of protest." Is that legal?

Mr. ELDERKIN: You can file a protest in another province. It is just the question in Quebec you are required to file one. In other provinces, if you want to establish a claim you may wish to file a protest to dishonour the bill, and in that case you have that as evidence in court. I am not a lawyer, but am I right?

The CHAIRMAN: Yes.

Senator KINLEY: That does not come under this Bills of Exchange Act though?

Mr. ELDERKIN: Yes; what it says in here is that you do not have to file a protest to effect dishonour.

Senator KINLEY: But on a note they say you waive notice.

Mr. ELDERKIN: Yes.

Senator KINLEY: That is a contractual obligation under the statute. They have to send a notice of dishonourment, but they do not do it, but should they be allowed to do this?

Mr. ELDERKIN: It is automatic. The waiver is given by the person to whom the amount is due, so if he wants to waive notice there is no reason why he should not.

Senator KINLEY: If I endorse a note to a man and they forget to send a dishonourment notice, they do not have to send it?

Mr. ELDERKIN: No, because you have signed the note to the effect that you have waived that right. You have signed an endorsement that you have waived that right.

The CHAIRMAN: The law permits them to.

Mr. ELDERKIN: Then you do not have to sign, senator.

The CHAIRMAN: Don't sign.

Senator CROLL: Mr. Chairman, while we have Premier Lesage's consent and before Levesque and Kierans know about the bill, I move we pass it.

The CHAIRMAN: First of all, does the committee approve of the amendment? Have you any questions or shall I report the bill with the amendments?

Hon. SENATORS: Carried.

The CHAIRMAN: That is all the business we have before us.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 3

First Proceedings on Bill S-17,
intituled: "An Act to amend the Bankruptcy Act".

WEDNESDAY, MARCH 23rd, 1966

WITNESSES:

The Canadian Bar Association; The Canadian Institute of Chartered Accountants; The Board of Trade of Metropolitan Toronto and The Board of Trade of Montreal; all represented by the following: Lloyd W. Houlden, Q.C., Toronto; J. L. Biddell, F.C.A., Toronto; Michael Greenblatt, Q.C., Montreal and W. J. McQuillan, Q.C., Montreal.

The Credit Granters' Association of Canada: R. W. Stevens, Counsel; R. C. Helen, President; R. A. Mackenzie.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE
the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	Paterson
Aseltine	Gouin	Pearson
Baird	Haig	Pouliot
Beaubien (<i>Bedford</i>)	Hayden	Power
Beaubien (<i>Provencher</i>)	Hugessen	Reid
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Croll	Macdonald (<i>Brantford</i>)	Walker
Davis	McCutcheon	White
Dessureault	McKeen	Willis
Ferris	McLean	Woodrow—(50)
Fergusson	Molson	
Flynn	O'Leary (<i>Carleton</i>)	
Gélinas		

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 9, 1966.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Power, P.C., for the second reading of the Bill S-17, intituled: "An Act to amend the Bankruptcy Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 23, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Baird, Beaubien (*Bedford*), Benidickson, Blois, Brooks, Burchill, Connolly (*Ottawa West*), Cook, Croll, Flynn, Gélinas, Haig, Irvine, Kinley, Leonard, Macdonald (*Cape Breton*), Pearson, Pouliot, Power, Smith (*Queens-Shelburne*), Taylor and Vaillancourt. (24)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel and R. J. Batt, Assistant Law Clerk and Chief, Committees Branch.

In the absence of the Chairman and on Motion of the Honourable Senator Taylor, the Honourable Senator Croll was elected Acting Chairman.

On Motion of the Honourable Senator Leonard it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings on Bill S-17.

Bill S-17, "An Act to amend the Bankruptcy Act" was examined.

The following witness was heard:

Department of Justice: Roger Tassé, Superintendent of Bankruptcy.

The Chairman having arrived, the Acting Chairman vacated the Chair.

The following organizations; *The Canadian Bar Association; The Canadian Institute of Chartered Accountants; The Board of Trade of Metropolitan Toronto* and *The Board of Trade of Montreal* were represented by a joint deputation consisting of the following witnesses: Lloyd W. Houlden, Q.C., Toronto, J. L. Biddell, F.C.A., Toronto, Michael Greenblatt, Q.C., Montreal, W. J. McQuillan, Q.C., Montreal.

The Credit Granters' Association of Canada: R. W. Stevens, Counsel, R. C. Helen, President, R. A. Mackenzie.

At 12.40 p.m. the Committee adjourned.

At 2.00 p.m. the Committee resumed.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Beaubien (*Provencher*), Burchill, Croll, Flynn, Gélinas, Gouin, Haig, Irvine, Kinley, Leonard, Pearson, Power, Taylor and Vaillancourt. (16)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel and R. J. Batt, Assistant Law Clerk and Chief, Committees Branch.

The following witness was heard:

Department of Justice: Roger Tasse, Superintendent of Bankruptcy.

It was Agreed that further consideration of the said Bill be postponed until the printed proceedings were available to the Committee.

At 2.30 p.m. the Committee adjourned until Thursday, March 24, at 9.30 a.m.

Attest.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, March 23, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill S-17, to amend the Bankruptcy Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator David A. Croll, Acting Chairman, in the Chair.

The ACTING CHAIRMAN: Honourable senators, we have before us this morning Bill S-17, an Act to amend the Bankruptcy Act.

We have with us this morning Mr. Tassé, the Superintendent of Bankruptcy, and we also have representatives of The Canadian Bar Association, The Board of Trade of Metropolitan Toronto, The Montreal Board of Trade, and they have allocated certain aspects of the act amongst themselves. We will hear from them about these various aspects, and following that we will hear from the Credit Granters' Association.

The committee agreed that a verbatim report be made of the committee proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The ACTING CHAIRMAN: I suggest, honourable senators, that we should first hear from the Superintendent of Bankruptcy. He has prepared a statement copies of which will be distributed to you.

Mr. Roger Tassé, Superintendent of Bankruptcy: Mr. Chairman, honourable senators, gentlemen, I am the Superintendent of Bankruptcy and I was appointed to that position in April 1965.

It may be useful at the outset to give a brief outline of the Bankruptcy Act. This may assist in the better understanding of Bill S-17. I shall thereafter discuss in general terms the provisions of the bill.

The Bankruptcy Act may be said to establish three procedures:

1. An insolvent person may be petitioned into bankruptcy by his creditors.
2. An insolvent person may make a voluntary assignment in bankruptcy.
3. An insolvent person or a bankrupt may, before or after being petitioned or assigning himself into bankruptcy, make a proposal to his creditors.

Senator PEARSON: May I ask a question at this point, Mr. Chairman? Who determines when a person is insolvent?

Mr. TASSÉ: The act says that to be insolvent a person has to commit an act of bankruptcy, and in the case of a receiving order it is the court that decides

that question, and in the case of an assignment it is the official receiver who is receiving the assignment who decides whether the conditions of the act are met.

The *sine qua non* of being petitioned into bankruptcy or making an assignment in bankruptcy is to have debts totalling at least \$1,000. Certain persons can make an assignment in bankruptcy but cannot be petitioned into bankruptcy namely "individuals engaged solely in fishing, farming or the tillage of the soil or . . . any individual who works for wages, salary, commission or hire at a rate of compensation not exceeding twenty-five hundred dollars per year and who does not on his own account carry on business".

The first step in petitioning an insolvent into bankruptcy is for the creditor or creditors to file a petition in the Bankruptcy Court. If the petition is not contested there is a hearing before the Registrar. If it is contested there is a hearing before the judge. If the petition is successful, a receiving order is made and a trustee is appointed from among those licensed by authority of the Minister of Justice.

In the case of an assignment, the assignment is filed with the Official Receiver, who appoints a trustee, and proceedings from then on are the same as in the case of a successful petition. If a person wishes to make a proposal either for the purpose of securing his discharge by a payment of so much on the dollar or to gain time for the payment of his debts in full, he may make a proposal to this effect to a trustee either before or after he has been petitioned into or made an assignment in bankruptcy. A proposal does not become effective until it has been approved by "a majority in number and three-fourths in value of the creditors with proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution", and approved by the court.

In any case (petition, assignment or proposal), the first important move by the trustee is to call a meeting of the creditors. Unless it is a proposal or a summary administration bankruptcy, inspectors are appointed. The Official Receiver, except in the case of a proposal, also reports, to the first meeting of the creditors, upon his examination of the bankrupt as to his conduct, the causes of his bankruptcy and the disposition of his property.

In the case of a bankrupt who is not a corporation and whose realizable assets, after deducting the claims of secured creditors, do not appear to exceed \$500, certain of the requirements of the act relating to the manner of administering the bankrupt estate are relaxed. Such an estate is administered under the summary administration provisions of the act.

In the case of an assignment and receiving order, it is the duty of the trustee to verify the financial statement of the debtor and to ascertain that the debtor has declared all of his assets. The trustee and the creditors have certain means at their disposal for this purpose, such as the power to compel the examination of the debtor or of any person reasonably thought to have knowledge of the affairs of the bankrupt, as well as to compel the production of books and documents. The trustee administers the estate under the surveillance and the direction of the inspectors, as the case may be, and the creditors. This flows from a basic principle of bankruptcy legislation often referred to as "creditor control".

In the case of a petition followed by a receiving order, or an assignment, the trustee then proceeds to realize upon the assets of the bankrupt, and in the case of a proposal he proceeds to receive and distribute the monies made available by the proposer under the terms of the proposal.

When, in the case of a petition followed by a receiving order, or an assignment, the estate has been fully administered, the trustee and the bankrupt may apply for their discharge.

Similarly, upon the conclusion of a proposal the trustee applies for his discharge, but not the proposer.

The administration of each estate in bankruptcy by the trustees is also supervised by the superintendent who is vested with special powers for that purpose. More specifically, the trustee sends his statement of receipts and disbursements to the superintendent for his comments before the statement is placed before the court for taxation purposes.

The effect of a receiving order, assignment or proposal is that, generally speaking, during their currency, the creditors are prevented from taking individual action on their claims but the court may nevertheless authorize such action in extraordinary cases (Section 40(1)) and a secured creditor is not prevented from realizing upon his security.

There are certain debts from which a bankrupt is not discharged by bankruptcy proceedings including, for example, debts incurred for necessities of life.

Once a bankrupt has obtained his discharge he is free, with the exceptions above mentioned, of all debts provable in bankruptcy. This expression is defined to mean "all debts and liabilities, present or future, to which the bankrupt is subject at the date of the bankruptcy or to which he may become subject before his discharge by reason of any obligation incurred before the date of the bankruptcy".

An undischarged bankrupt must not engage in a trade or business without disclosing to all persons with whom he enters into any business transaction that he is an undischarged bankrupt and he must also so inform any person from whom he obtains credit for a purpose other than the supply of necessities for himself and family to the extent of \$500 or more.

The Bankruptcy Court is, generally speaking, one of the superior courts of the province; for example, it is defined, for the Province of Quebec, as the Superior Court, and, for the Province of Alberta, as the Trial Division of the Supreme Court. Much of the uncontested business is conducted, in practice, by the Registrar of the Court who is appointed by the Chief Justice. The Official Receiver, on the other hand, is appointed by the Governor in Council.

I come now to Bill S-17. Since the last revision of the Bankruptcy Act in 1949, a very large number of submissions, for amendment to the act, have been received from various individuals and organizations, including leading commercial, business and professional associations. A thorough revision of the Bankruptcy Act has been under study in the Department of Justice for quite some time.

The Minister of Justice has recently announced the establishment of a committee of three members to assist with the revision of the act. The committee has been requested to file his report by the end of the present year, and the Minister of Justice has stated that the recommendations of the committee will be given careful consideration when the bill revising the Bankruptcy Act is subsequently drafted.

Since the last revision of the Bankruptcy Act in 1949, there were no amendments to the act. Although Bill S-2, a Government measure to amend the Bankruptcy Act, was passed by the Senate on December 18, 1962 and July 30, 1963, in neither case did it reach second reading in the Commons. The purpose of Bill S-2 was to amend the "summary administration" provisions of the Bankruptcy Act, and to add a part relating to the orderly payment of debts.

A complete revision of the Bankruptcy Act being still some time away, Bill S-17 is an interim measure amending the Bankruptcy Act to provide remedies to some of the most urgent areas of complaints. A number of high priority amendments have therefore been incorporated into Bill S-2 and, should they be adopted, it is considered that they will do a great deal to correct some of the most flagrant abuses of the bankruptcy process.

These high priority amendments that have been incorporated in Bill S-2 may generally be grouped under six different headings:

1. More adequate means of dealing with frauds or other offences connected with bankruptcies will be incorporated in the act.
2. It will be possible for the court to review transactions which do not come within what may be called "moral business practices".
3. The provisions relating to a proposal made by an insolvent person will be tightened up to afford creditors better protection and prevent a proposal from being used as a stalling device to permit a debtor to dissipate his assets.
4. Bankrupts will be required to deposit with the trustee, for the benefit of their creditors, a certain portion of their salaries, wages or other remuneration.
5. Certain of the provisions of the act dealing with offences by trustees will be expanded.
6. A bankrupt corporation will be prevented from applying for a discharge.

I shall deal with these amendments in turn before coming to the amendments dealing with the "summary administration" provisions of the act and the new part relating to the orderly payment of debts.

1. MORE ADEQUATE MEANS OF DEALING WITH FRAUDS CONNECTED WITH BANKRUPTCIES

The present Bankruptcy Act is based on the principle of "creditor control".

This means, among other things, that the responsibility for detecting and eradicating irregularities on the part of bankrupts is the prime responsibility of creditors for whose benefit the estates are administered by trustees. Therefore before a trustee himself becomes involved in any extensive investigations or inquiries into the bankrupt's affairs, he will get the creditors' approval as well as, in some cases, their financial assistance. The act gives the trustee and the creditors certain powers for that purpose. (Sections 121 and following).

The Bankruptcy Act contains a number of provisions relating to prosecution. Section 163 provides that when the Bankruptcy Court is satisfied, upon the representation of the Superintendent, Official Receiver or trustee or any creditor or inspector, that there is ground to believe that an offence has been committed, in connection with a bankruptcy, the court may authorize the trustee to initiate a prosecution; and where a trustee is so authorized either by the creditors, the inspectors or the court, he is required to institute the proceedings and to refer the matter to the local provincial crown attorney.

In too many cases, however, the estate does not have sufficient funds to enable the trustee to carry out the necessary investigations or inquiries and the creditors are not prepared to provide the trustee with financial assistance because, as they often say, they are not interested in throwing good money after bad.

This attitude is quite understandable on the part of creditors who as individuals are primarily concerned with minimizing their own losses. But, at the same time, this attitude obviously does not meet the long term and public requirements of detecting and eradicating irregularities.

The result is that in these cases, unless some public authority intervenes to make the investigations and inquiries possible, frauds and other criminal offences may not be revealed.

The administration of justice in the province, under our constitution, being a subject matter of provincial legislative jurisdiction, the investigation and

prosecution of fraudulent transactions committed before a bankruptcy, or any fraud not involving the trustee, is the responsibility of the provincial authorities in the course of the ordinary administration of criminal justice. The provincial authorities have, in recent years, shown an active and concrete interest in these cases and steps have been taken to repress these types of abuses.

However, experience has shown that there is a serious problem area comprising cases where there is some reason to suspect irregularities but the creditors, on the one hand, are not prepared to undertake the expenses of making an investigation and the provincial crown prosecutor, on the other hand, does not feel that the suspicion of misconduct is strong enough to bring him into the case at the present stage. This is an area where experience indicates that the principle of "creditor control" is not working effectively. At the conference of the Attorneys General held in Ottawa in January 1966, the federal Government has informed the provincial authorities that it was prepared to take the necessary steps, by way of amendment and otherwise, to enable the superintendent to conduct investigations in this problem area and carry them to the point where suspicion of irregularity is either dispelled or brought to a degree of concreteness where the crown prosecutor or local police may be expected to interest themselves in the case. The Bankruptcy Act having not been drafted, in 1949, for the purpose of confiding this particular rôle to the Superintendent of Bankruptcy, it is considered that it is necessary to amend the act to give the superintendent additional powers of investigations and inquiries.

This particular problem has been discussed at the last Conference of Attorneys General and the provinces have agreed, on their part, to take up the investigation and prosecution in all cases where the evidence, originally or as a result of investigation instigated by the superintendent, will so warrant.

The new section 3A of the act will give the Superintendent of Bankruptcy adequate powers to make any inquiry or investigation that may be necessary to expose frauds or other offences connected with estates in bankruptcy, whether they have occurred before or after the bankruptcy.

The bill (clause 18, section 128A) also provides that the trustee will file with the Superintendent of Bankruptcy, in respect of each estate, a report setting out the name of the bankrupt and, where the bankrupt is a corporation, the name and addresses of the directors and officers of the corporation, and, when applicable, the names of the persons controlling the day-to-day operations of the bankrupt, as well as the trustee's opinion whether the deficiency between the assets and the liabilities of the bankrupt has or has not been satisfactorily accounted for and, finally, the probable causes of the bankruptcy. The information contained in this report will of course be most valuable to the superintendent in assessing whether the bankrupt's affairs should be investigated or not.

A separate report setting out only the name of the bankrupt and the names and addresses of the directors and officers of the corporation, where the debtor is a corporation, as well as the names of the persons controlling the day-to-day operations of the bankrupt, will also be required to be filed by the trustee with the Official Receiver. This will permit the dissemination of information relating to previous bankruptcies so that prospective creditors may be in a position to better judge the credit rating of their customers.

Clause 16 (section 120(4), (5) and (6) of the act) will also give the Official Receiver power to make an inquiry or investigation when it will be deemed necessary in respect of the conduct of a bankrupt, the causes of his bankruptcy and the disposition of his assets.

Other changes coming under this particular heading include clauses 2 and 20 of the bill.

2. REVIEW OF CERTAIN TRANSACTIONS

In recent years, numerous representations have been received about apparent or suspected iniquities towards creditors resulting from transactions which had taken place prior to the bankruptcy and which involved related persons, or a closely held corporation and its officers or shareholders. While these transactions might be technically legal, on many occasions they do not come within what may be called moral business practice. Some of these most common practices would include; for example:

- 1 An artificially prized sale between the debtor and persons or corporations which in some way control the debtor.
- 2 Payment by the debtor of exorbitant premises or equipment rentals or inter-company management charges.
- 3 Payment of exorbitant salaries or expenses allowances to officers of the company, etc.

These amendments (clauses 1 and 12 of the bill) will incorporate in the Bankruptcy Act the technique used in income tax matters to deal with this type of problems. They will provide that where a person has sold, etc., or purchases, etc., property or services to or from another person with whom the first mentioned person was not dealing at arm's length, and within twelve months of such transaction, the first mentioned person becomes bankrupt, the court upon application of the trustee, will have the power to review the transaction to inquire whether the consideration was conspicuously excessive or inadequate, and if so, give judgment to the trustee for the difference between such consideration and the fair market value of the property or services.

These amendments will also provide that where a corporation, within twelve months preceding its bankruptcy, has redeemed shares or granted a dividend when the corporation was insolvent or that rendered the corporation insolvent, recovery may be made against the directors or against certain of the shareholders of the bankrupt corporation.

Other amendments will also be made to other provisions of the act to restrict the rights of creditors that are related to the bankrupt. (Clauses 11, 13 and 14 of the bill).

3. TIGHTENING UP OF THE PROVISIONS RELATING TO A PROPOSAL MADE BY AN INSOLVENT PERSON

One of the substantial changes that was made to the Bankruptcy Act in 1949 dealt with proposals made by insolvent persons. While these provisions have proven to be of considerable benefit to debtors and creditors alike, these amendments will eliminate the possibility of abuses by debtors by giving the creditors, under the direction of the court, more control over the assets of the debtor. They will also provide that if the proposal is not accepted by the creditors, or by the court, the debtor will be deemed to have made an assignment on the date the proposal was originally filed with the Official Receiver. Likewise, if a proposal is not followed through by the debtor, he will be deemed to have made an assignment in bankruptcy. (Clauses 5 to 9 of the bill).

4. DEBTORS TO BE REQUIRED TO DEPOSIT WITH THE TRUSTEE A CERTAIN PORTION OF THEIR SALARY, WAGES OR OTHER REMUNERATION

The amendments (clause 10 of the bill) clearly set out a procedure whereby bankrupts will be required to contribute some part of their post-bankruptcy income to the trustee for the benefit of the creditors. The act (section 39) would seem to indicate that a contribution may be required but this has

been left to the discretion of trustees and the courts with the result that debtors are treated in a most inconsistent manner across the country.

It is often alleged that certain trustees would inform the debtors that they must pay a certain sum to cover the trustee's disbursements and fees, whereupon they shall presumably get their discharge and that there are, in numerous cases, no attempts on the part of the trustee to collect a portion of the debtor's remuneration.

With this amendment, the trustee will have the obligation to see that the debtor deposit for the benefit of his creditors a certain portion of his salary, wages or other remuneration. It is thought that these provisions will greatly help to correct some of the abuses of the bankruptcy process, especially by preventing the obtaining of a too easy discharge from personal debts through bankruptcy proceedings.

5. EXPANSION OF THE PROVISIONS DEALING WITH OFFENCES BY TRUSTEES

The main effect of the amendments (clause 19 of the bill) in this respect, is to make it an offence for a trustee to receive any remuneration or gift other than the remuneration payable out of the estate and to make any kind of arrangement for the splitting of his fees with a solicitor or other person.

6. A CORPORATION WILL NOT BE ABLE TO OBTAIN A DISCHARGE FROM BANKRUPTCY

The purpose of this amendment is to compel a bankrupt corporation to make a proposal for the benefit of its creditors should the shareholders wish to use a stock exchange listing to their own advantage, for example. These amendments will also prevent a corporate shell from being used to obtain further credit to the detriment of new creditors.

I shall now deal with the provisions that were contained in Bill S-2. They dealt with the summary administration provisions of the Bankruptcy Act as well as with the Orderly Payment of Debts. I shall explain them in turn.

7. THE SUMMARY ADMINISTRATION PROVISIONS

The present Bankruptcy Act was passed in 1949 at which time it represented an extensive revision of the existing legislation. One of the changes made at that time was to enact special provisions applying where "the bankrupt is not a corporation and in the opinion of the Official Receiver the realizable assets of the bankrupt, after deducting the claims of secured creditors, will not exceed five hundred dollars" (26(6)). The effect of these "summary administration" provisions was to eliminate certain of the safeguards ordinarily applicable in the administration of bankrupt estates. For example, they provided that there should be no inspectors and that the trustee need not deposit security in respect of each estate. The intention of these "summary administration" provisions was to expedite and render less expensive the administration of small estates and allow for the bankrupt's early discharge.

Over a period of years, however, certain abuses have been disclosed in the administration of estates under the Bankruptcy Act and these abuses are attributed in considerable measure to the "summary administration" provisions. The abuses included the solicitation of bankruptcies by trustees, failure to realize upon assets for the benefit of creditors, including failure to require the bankrupts to deposit a certain portion of their remuneration, and, in some cases, misappropriation of assets. A number of trustees have lost their licences as a result of investigations that have been carried out and a number of prosecutions have been conducted. As a consequence, representations have been

received from several quarters for the repeal or modification of the "summary administration" provisions as a means of preventing such abuses, and it is considered that such an amendment would be a considerable step toward such prevention. This bill therefore amends the Bankruptcy Act by repealing sections 114 and 115 of the Bankruptcy Act, which contain the "summary administration" provisions, and by re-enacting them with certain deletions and changes. For example, the provision, to which I have already referred, whereby security is not required, under the present act, to be deposited by a trustee in respect of each "summary administration" estate, is changed to provide that such security is not required "unless directed by the Official Receiver". The provision which I mentioned previously, in the present act, to the effect that there shall be no inspectors for such an estate, is changed to provide that there shall be no inspectors "unless the creditors decide to appoint them". These changes leave it in the hands of the Official Receiver and the creditors, respectively, to insist upon the depositing of security in connection with a particular estate, and the appointment of inspectors, where they consider it desirable.

In the result, the changes made in sections 114 and 115 eliminate or modify a number of the "summary administration" provisions in order to provide for the stricter administration of the estates to which the summary administration procedure applies.

8. THE ORDERLY PAYMENT OF DEBTS

An act of the Province of Alberta, called the "Orderly Payment of Debts Act", was held, by the Supreme Court of Canada, to be *ultra vires* the provincial legislatures as impinging upon the federal jurisdiction over bankruptcy and insolvency conferred by section 92(21) of the British North America Act upon the federal Parliament. (Validity of the Orderly Payment of Debts Act 1959 (Alta), 1960, S.C.R. 571). The Alberta legislation had never been proclaimed, but a similar Act of the Province of Manitoba had been in force since about 1932 and the effect of the Supreme Court decision was to rule this act as *ultra vires* also. Both Manitoba and Alberta then requested that federal legislation be enacted, of the same character as the provincial legislation, and that it be made subject to proclamation from province to province, at the request of the provincial authorities.

The Orderly Payment of Debts legislation provided a comparatively simple and inexpensive procedure whereby certain debtors, who were unable to meet their obligations as they came due, could apply to the clerk of the county or district court to fix amounts to be paid into court and distributed pro rata among their creditors until they were paid in full. The present bill enacts a new part of the Bankruptcy Act, Part X, which closely follows the provincial legislation which was declared *ultra vires*.

Under Part X a debtor who cannot meet his debts may go to the clerk of the designated court and make an affidavit setting forth his debts, obligations, property and income and ask that the clerk issue a "consolidation order" setting out the amounts owed by the debtor to his creditors and, unless the debtor is unable immediately to make any payments, the amounts that he must pay into court until all such debts are fully discharged. While such an order is in effect, and the debtor is abiding by it, no creditor may proceed against the debtor in connection with a debt to which Part X applies. Generally speaking, Part X does not apply to debts in excess of \$1,000 each, without the consent of the creditor and there are certain other exclusions of debts from the application of Part X. Each creditor has an opportunity to object to the terms of a "consolidation order", before it is issued, or to ask for its review if the circumstances of the debtor have improved. The enactment of Part X will not prevent the debtor being put into bankruptcy or making an assignment in bankruptcy in

the ordinary way, so that, where advantage is taken of its provisions, this will likely depend upon a measure of voluntary forbearance and confidence in the debtor, on the part of the creditors. If the proceedings under Part X are successful, they will result in the debtor discharging his debts without incurring the stigma of bankruptcy and without invoking the more costly and complicated procedure, for making proposals, which is presently provided by the act.

The provisions of Bill S-17 dealing with the "summary administration" provisions of the act and the Orderly Payment of Debts are the same as those found in Bill S-2 that was passed by the Senate in 1963 except for minor procedural changes that were made to some of the provisions of Part X.

The ACTING CHAIRMAN: Honourable senators, if you require some elaboration of the provisions you should put your questions now.

Senator PEARSON: What is the actual meaning of the term "orderly payment"?

Mr. TASSÉ: Well, it may be said that this means that the payment of creditors' claims will be made in a certain order fixed by the court. It does not mean they will be paid by giving priority to certain claims; it means that they will be discharged in a certain order in view of the fact that the debtor is not in a position to pay them in full in accordance with the terms of the contracts under which the claims arise.

The ACTING CHAIRMAN: Everybody will be used in the same way—that is the effect of it. If \$100 comes in everybody will get his portion without priority on a prorata basis.

Senator KINLEY: Speaking from memory, I think we have a Creditors' Arrangement Act. How does that go along with this Bankruptcy Act?

Mr. TASSÉ: I think this is an act that is not very much used nowadays. Speaking from memory I think it is an act which was passed in 1932.

Senator KINLEY: I was here when it was passed and I think it is called the Creditors' Arrangement Act. If I remember correctly it is a simple way of dealing with this problem instead of going to the courts.

Mr. TASSÉ: Perhaps you are thinking of the Farmers—

Senator KINLEY: I am not quite sure now whether it is a provincial act or a federal act. Perhaps Mr. Hopkins would know.

The ACTING CHAIRMAN: Mr. Hopkins thinks it is a provincial act.

Senator KINLEY: Will it take precedence over this?

Mr. TASSÉ: This act will apply in provinces which ask for its proclamation in their territory. I understand there is a provincial act in Ontario somewhat similar to this and also in the Province of Quebec there is the Lacombe Law which is somewhat similar. If these provinces ask for its proclamation, Part X will apply.

Senator KINLEY: Therefore this is only an enabling act.

Mr. TASSÉ: Yes.

Senator KINLEY: Is Part X an important section?

Mr. TASSÉ: Yes, Part X is the section that will include in the Bankruptcy Act provisions dealing with the orderly payment of debts. This is the last part I dealt with in the statement I have read.

Senator KINLEY: What is your definition of the difference between insolvency and bankruptcy?

Mr. TASSÉ: I would say that insolvency is a condition existing before bankruptcy proceedings are taken, and then bankruptcy legislation may come into play. It may, possibly, be briefly and in a general way described as the position of a person who is unable to pay his debts, and when such a condition

exists, and there are other conditions which are provided for in the act, say, where an act of bankruptcy which has occurred within six months—that person may be put in bankruptcy. Perhaps it will be simpler this way; I have here the definition of “insolvent person” under the act. It is as follows:

“insolvent person” means a person who is not bankrupt and who resides or carries on business in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (i) who is for any reason unable to meet his obligations as they generally become due, or
- (ii) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (iii) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

The ACTING CHAIRMAN: What the witness is saying, Senator Kinley, is that those are the symptoms of bankruptcy.

Senator KINLEY: I always understood a man was insolvent when he could not pay his debts, and he was bankrupt if he did not have sufficient assets to pay his debts. Is that the difference?

Mr. TASSÉ: I would say insolvency is a fact which occurs when a person cannot meet his claims or obligations. If such a fact exists, there may be legal consequences attached to it which may involve bankruptcy. In those circumstances the law will give some consequences to that fact. But a person may be insolvent and not in a state of bankruptcy.

Senator KINLEY: But any creditor can apply to make him bankrupt.

Mr. TASSÉ: Any creditor can apply to the court for a receiving order.

Senator KINLEY: Have you increased here the liabilities so far as incorporated companies are concerned? It seems to me that you say something about directors or people who receive salaries—did you say something about that?

Mr. TASSÉ: My point was that there are transactions which although they may appear to be legal do not come within what is considered to be moral business practices. For instance you may have a situation where you may have a company which is on the verge of going bankrupt and the directors arrange for payments of high fees, exorbitant fees to themselves or to officers of the company, and eventually the company goes bankrupt. This bill will include amendments which will render possible an application in such cases to the court to have these transactions reviewed by the court, and if the court comes to the conclusion that the considerations given for the transaction are exorbitant, then the trustee will be in a position to obtain a judgment and that person will have to pay back to the estate the difference between the sum paid and what would have been a reasonable amount.

Senator PEARSON: You have to go to the court to get that judgment?

Mr. TASSÉ: The trustee would have to go to the court.

Senator KINLEY: It seems to me from reading this that you have brought into it things like “moral rights” as against purely legal rights. Surely that is a new feature in law. In our experience a man who has a moral right does not count for much in court. You seem to be including in this bill considerations of moral right.

Mr. TASSÉ: I am not sure I understand what you are saying.

Senator KINLEY: You said that if a man has a moral right.

Mr. TASSÉ: I hope I understand you correctly—what we have done here—as time changes and as business practices change with the times, there are certain

practices that are developed and which may be accepted by our legal system as being legal and beyond legal reproach, but these practices may be damaging to the business community and the public interest, and by bringing them within the scope of the act, certain of these practices which in the past were considered unimpeachable, from now on will be reviewed by the court so that there will not be any undue benefit given to certain persons who want to avail themselves of loopholes in the legislation.

Senator KINLEY: That is under the control of the court, is it not? You would not give the trustees or the inspectors that right; it would be the right of the court, would it not?

Mr. TASSÉ: Exactly. The act says clearly that in any such case—and such cases are limited in number—the trustees will have to apply to the court, and it is the court that will decide whether redress should be given to the estate, and some direction or guide-lines are given to the court.

Senator BROOKS: Has the trustee any right of appeal? If the court decides against him can he appeal to any other body?

Mr. TASSÉ: Yes, it would be like any other decision of the court. The trustee or any other person who may be aggrieved by the decision may appeal to the appellate court.

Senator KINLEY: Do you think that there might be some unfairness in regard to what are called preferred claims? You see, a person who has a preferred claim gets his money, but another person does not get it. What do you say about that?

Mr. TASSÉ: Are you asking me the reasons why there are preferred claims?

Senator KINLEY: Suppose there is a bankruptcy and I am a creditor, and I look at the matter and see that somebody has a preferred claim that I know nothing about. Where do I, as a subcontractor, come in?

Mr. TASSÉ: The act defines what a preferred creditor is and there is section 95. There are a number of creditors who are preferred to others.

Senator LEONARD: Mr. Chairman, we have a number of prospective witnesses present, and I am wondering if these questions can be left until after we have heard them, because our time is somewhat limited. Can we do that?

The ACTING CHAIRMAN: Senator Leonard, it was my thought that after a few more questions we would be finished with the present witness. Mr. Tassé will remain with us. We have some other witnesses—

Senator BENIDICKSON: Mr. Chairman, can you indicate to us who is likely to request the opportunity of testifying? Have you a long list?

The ACTING CHAIRMAN: No, they have divided the act up between four witnesses who are knowledgeable, and their remarks will be brief. They have been before this committee on a number of other occasions.

Senator FLYNN: Will the Superintendent stay with us, and be present when we deal with the bill clause by clause?

The ACTING CHAIRMAN: Yes. Mr. Houlden, will you bring your galaxy up? Mr. L. W. Houlden will be the first witness before us, and he has with him some others whom he will introduce, and he will tell the committee whom he represents.

Mr. L. Houlden, Q.C.: Honourable senators, my name is L. W. Houlden, and I and those with me have the privilege this morning of representing the following organizations: The Canadian Bar Association, the Canadian Institute of Chartered Accountants, the Board of Trade of Metropolitan Toronto, the Montreal Board of Trade, and the Canadian Credit Managers' Association. These bodies have been conducting joint studies of the Bankruptcy Act during the past winter, and when Bill S-17 was introduced they immediately proceeded to

study the bill in both Montreal and Toronto. Because of the shortness of time we were able only to consolidate our endeavours last evening, and the result is that we do not have a written submission for you this morning. However, we have arrived at unanimous agreement on the points that we would like to present to you, but we shall have to present them orally.

Before introducing to you the persons who have been selected by our groups to make the presentation this morning I should like to make a general statement that we are most pleased with Bill S-17. We believe that in principle this bill will go a long way towards overcoming the defects in the present Bankruptcy Act. We support most enthusiastically the adoption of this bill. Our suggestions for its revision this morning are made only to correct certain minor defects that we believe exist in the bill, and they are not to be taken as any general criticism of it.

With your permission, there are four of us who would like to make submissions this morning concerning Bill S-17. There is Mr. J. L. Biddell, F.C.A. from Toronto, who is sitting on my right. Beside him is Mr. Michael Greenblatt, Q.C., and then beside Mr. Greenblatt is Mr. W. J. McQuillan, Q.C. Both Mr. Greenblatt and Mr. McQuillan are from Montreal. Then there is myself, L. W. Houlden, Q.C. from Toronto.

We have divided the various clauses of the bill among ourselves so as to be able to deal with them as thoroughly as we may. With your permission, Mr. Chairman, I would like now to call upon these gentlemen to deal with the clauses of the bill which have been allotted to them. Mr. Biddell wishes to speak to the first clause of the bill, but we have no suggestions for change with respect to it.

Mr. J. L. Biddell, F.C.A., The Board of Trade of Metropolitan Toronto: Honourable senators, I would like first to congratulate the proponents of Bill S-17, and those who have been responsible for drafting its clauses. For just a moment I should like to speak for the Canadian Institute of Chartered Accountants. I believe that the accountants who have spent a great deal of time studying the Bankruptcy Act over the past two or three years can feel highly gratified with the result of their work, since the great majority of their most important recommendations have been incorporated in Bill S-17. With the enactment of this bill we believe that the business community can feel confident that the deficiencies in the law which in the past may have permitted dishonest if not fraudulent bankruptcies have now been substantially eliminated.

It is, of course, appreciated that any statute of this nature is only as effective as its enforcement. In this area too we think the stage has been set for a most worth-while improvement. The sections in the bill providing for greater activity by the office of the Superintendent in investigating irregularities in the affairs of bankrupts and the conduct of trustees are most welcome. Under the supervision of the new Superintendent, Mr. Tassé, I think we can all look forward to a great improvement in the control of insolvency problems in Canada.

I should like to say a few words on what I believe are the most important provisions in this bill, namely, those that define related persons, and which set aside as being subject to review transactions which if entered into between strangers would be perfectly proper but which when they are entered into between an insolvent person and someone who did not deal with him at arm's length will be made subject to review by the court, and a fair accounting made for the benefit of the creditors. I am sure that almost every one who has made representations for the reform of the Bankruptcy Act has agreed over the years that this was a major area of deficiency in the act.

The great majority of what the business community believed to be dishonest or fraudulent bankruptcies were made possible by the fact that we did not have this arm's length concept in the Bankruptcy Act.

The proposals included in Bill S-17 do not improperly interfere with the basic principle of the law of limited liability. They relate only to the review and adjustment of flagrant cases in which a debtor can legally make a profit out of his bankruptcy.

I think the draftsmen of this bill are to be congratulated upon the magnificent work they have done in putting it together. They have done a first-class job for the business community. We have only the most nominal suggestions to make with respect to the particular sections dealing with these arm's length principles, and we propose to bring these up as we review the bill clause by clause.

Mr. HOULDEN: Honourable senators, we have no comments to make on paragraph 2 of the bill; but Mr. Michael Greenblatt will deal with paragraph 3, on page 4.

Mr. Michael Greenblatt, Q.C. of The Canadian Bar Association: The whole of sections 3A and 3B are basic to the legislation before the Senate in relation to the Bankruptcy Act and are most enthusiastically endorsed and supported by our committee.

Apart from other amendments, we believe that the introduction of sections 3A and 3B plus the vigilance of creditors and their trade associations both before and after the bankruptcy, should go a long way to obtain better administration of the Bankruptcy Act by trustees, produce better dividends and eliminate many of the fraudulent bankruptcies of the past.

This section provides the Superintendent with the widest possible and imaginable powers, duties and opportunities to supervise the proper administration of the Bankruptcy Act, enforce its provisions, investigate and examine anyone, search and seize records, and report offences to the Attorney General of the province for prosecution.

While we recommend and approve the far-reaching powers of investigation given to the Superintendent, we do, however, submit that these powers should not be applicable where there exists a solicitor-client privilege. The solicitor-client privilege is defined by the Income Tax Act in subsection(e) of section 126A of that Act, as follows:

"solicitor client privilege" means the right, if any, that a person has in a superior court in the province where the matter arises to refuse to disclose an oral or documentary communication on the ground that the communication is one passing between him and his lawyer in professional confidence.

This privilege is expressly recognized in section 126A of the Income Tax Act, whereby it is exempted from that Act's investigation provision, and we recommend that the same exception should be provided for in the Bankruptcy Act under sections 3A and 3B.

The ACTING CHAIRMAN: Let me ask one question. I was under the impression that these sections were copied almost verbatim from the Income Tax Act. Is that true, Mr. Greenblatt?

Mr. GREENBLATT: That is true as far as the definition of a related person and an armslength transaction is concerned, but with respect to the far-reaching investigating powers given to the Superintendent, these parts are not a copy of the Income Tax Act, although many similar provisions appear in the said Act. The Income Tax Act has given special recognition of solicitor-client privilege, and we recommend that the Senate give thought to this provision. It had not

been included in the 1949 provision of the Bankruptcy Act. Such a right and privilege does not exist in most provinces—it does exist in Quebec and may exist in some of the common law provinces. I understand that it does not exist in the Province of Ontario.

It is a new thought and was introduced in the Income Tax Act only in 1956. Although I have not studied the matter closely, I am told this morning that it does appear in Ontario in the Workmens Compensation Act. It may not appear, or expressly form part of the Combines Act.

Mr. HOULDEN: We have no comments on paragraph 4, on page 6 of the bill. We do have comments on paragraph 5, on page 6. Mr. Michael Greenblatt will deal with recommendations on paragraph 5.

Mr. GREENBLATT: Honourable senators, the purpose of paragraph 5 is to provide the machinery for protecting creditors by giving them the opportunity of obtaining an interim receiver to protect the assets while the proposal is pending, or after a proposal has been initiated by a debtor and after the trustee has been named under that proposal.

Under the present act, all the trustee does under the proposal is simply to receive the information from the debtor, examine the statement of assets and liabilities and value the assets and the extent of the liabilities, send out this material to the creditors, assemble a meeting of creditors for the purposes of dealing with that proposal; but he does not interfere with the operation of the insolvent, who is not a bankrupt at that stage. It is a pre-bankruptcy proposal at that stage. He does not interfere with the operation of the debtor's business whose proposal is under consideration.

We have felt that while there is a possibility in some provinces and under some jurisdictions based upon the interpretation of the present act that an interim receiver may be appointed to protect the assets, pending the proposal, nevertheless, it does not always happen, and the kind of allegations which must be made by a petitioner or by creditors acting as a group asking for such an interim receiver are rather onerous and sometimes could lead to embarrassment for the creditors requesting the order, because it is almost tantamount to alleging fraud or a possibility of fraud being committed or that the assets are being squandered or are not properly being taken care of, and that fraudulent preferences are being created in favour of certain creditors.

In order to protect the creditor as a matter of right the present amendments provide that the appointment of an interim receiver may be made—and I emphasize—may be made—under subsection (1) of section 24A when it is shown to the court to be necessary for the protection of the estate of the debtor, or when at least five per cent of the unsecured creditors are representing at least 25 per cent or more of unsecured claims.

The second section I read is especially a step in the right direction, and it was the kind of step we have been advocating for many years. However, as the proposed amendment now reads we have again a situation where the court may or may not grant an Interim Receiver. We want to specially emphasize that where it is necessary for the protection of the estate the court may, on proof, appoint an interim receiver, but when it is requested by five per cent of unsecured creditors holding 25% or more of the amount of the unsecured claims, the court should have no discretion in the matter and proceed to appoint an interim receiver. That is our point, and it is to that extent we are asking that subsection (3a) and subsection (3b) of section 5 of the bill be amended.

Senator CONNOLLY (*Ottawa West*): I understand that the appointment of an interim receiver may be made when at least five per cent of the unsecured creditors representing at least 25 per cent of the total amount of unsecured claims request it?

Senator HAIG: All you want is the word "may" changed?

Mr. GREENBLATT: "May" to apply with respect to (a), that is, where the court finds it necessary to grant an interim receiving order, but "must" when in the opinion of the court it is shown that at least 5 per cent of the unsecured creditors having a certain portion of the unsecured claims, desire it.

Senator HAIG: You want this word changed from "may" to "shall"?

Mr. GREENBLATT: No. "May" with respect to (a); and "shall" with respect to (b).

Mr. HOULDEN: With reference to clause 6 of the bill, I have been asked to speak to that.

When a proposal is made to creditors, there is a meeting of the creditors to consider it. You will notice in section 31(2), at the bottom of page 6, it reads:

Each class of creditors shall vote independently of the others. . .

Among our group here today we have considerable experience in bankruptcy work and none of us has ever seen a proposal where creditors have voted by classes. We are content if that word "shall" is changed to "may". There might be some circumstances where one would want creditors to vote by classes, but the suggested paragraph would introduce something entirely new. We think it would hinder the act if creditors had to vote by classes.

The other point which we have in clause 6 of the bill is shown at the top of page 7. Section 31(4) provides:

The trustee, as a creditor or as a proxy for a creditor, may not vote on the proposal.

We can see no reason for that provision. Quite frequently, creditors are not able to be at a meeting and they will assign their proxies to the trustee and the trustee, who will be the chairman of the meeting, will be instructed by the creditors as to what they want him to do. We see no reason why this right should be taken away from creditors, or why a trustee should not be able to use a proxy which is given to him.

With reference to clauses 7 and 8 of the bill, Mr. W. J. McQuillan, Q.C. will speak to them.

Senator FLYNN: Before we go on to clause 7, may I ask a question on clause 6? I agree that I have never seen any vote by class, but I wonder what is the use of mentioning this at all. My understanding is that a proposal is irregular if it does not provide for the payment by preference of the secured and preferred creditors.

Mr. HOULDEN: That is right.

Senator FLYNN: Therefore, there are only the ordinary creditors who are called upon to vote on a proposal and I do not see even the use of changing "shall" to "may". I have never been able to find out what was the purpose of this provision.

Mr. HOULDEN: I must agree. I suppose that theoretically there is some possibility of abuse. We do not see any harm in the word "may", but with the word "shall" it would not make any sense.

Senator FLYNN: And it would be no use, either.

Mr. HOULDEN: No, it may not be.

Mr. W. J. McQuillan, Q.C., (The Canadian Bar Association): Honourable senators, clause 7 sets out the principle of appointment of inspectors. Under section 32A, for the first time the right of creditors to appoint inspectors under a proposal is accepted, and this is just as important under a proposal as in a bankruptcy problem. If we give inspectors the powers of inspectors, we feel we should also provide that they should have the duties and compensations of inspectors. In many instances, inspectors may have to travel some distance and, their disbursements should be covered, just as it is in bankruptcy proceedings. There should also be some provision for fees.

Secondly, in section 32B we suggest a minor change as regards wording. Normally, under the act, the word for the acceptance by the creditors of a proposal is "accept" not "approve". When we use the word "approve" we are speaking of the court's approval. I suggest that in the first line of section 32B "approve", be changed to "accept".

In section 32B(1) there is reference to "deemed to have made an authorized assignment". The principle is sound but we have to bear in mind that where we may be dealing with immovable property there must be some sort of judgment or order which can be registered. Therefore, we think this should be changed to read that an order be issued.

Perhaps the most substantial point which we have in regard to section 32B is that, once the proposal has been rejected, the meeting to consider the proposal should convert itself into a meeting of creditors. When the meeting is called by the Trustee the creditors should be advised that if they reject the proposal, they convert themselves into a meeting of creditors, at which meeting the trustee will be appointed by ordinary resolution.

In section 32B(2), we suggest again a change from the word "approve" to the word "accept."

In regard to clause 8 of the bill, we suggest that the levy provided for in section 34(5), (6) and (7), that is, the levy of 2 per cent, provided under section 106 of the act, should not be extended to include a distribution by the trustee of shares. The value of shares in a corporation is very tenuous, to say the least, when they are offered to creditors under a proposal. The difficulty of fixing the value would be in many cases impossible to overcome. We suggest that a distribution of shares should be exempted from the provision of the levy of 2 per cent.

We also suggest that the levy should not apply to secured creditors. Those in practice are well aware of the convolutions that secured creditors must now indulge in, in order to avoid the levy. In bankruptcy, for example, rather than permit the trustees to realize the assets under section 88 of the Bank Act a bank will use the device of naming the trustee as agent for the bank. This is to avoid the application of the 2 per cent levy, which would be applicable in the event the trustee realizes the assets pledged the bank under Sec. 88 of the Bank Act.

The distribution of shares should be exempt, the distribution to secured creditors should be exempt. Where the terms of the proposal are carried out by the issue of notes to creditors, which frequently are payable over a period of 2 or 3 years, every six months, some creditors will request the issue of the notes and in some cases they can take those notes to the bank and discount them. Where a distribution is made by way of notes, it is suggested that the levy of 2 per cent should be applicable and payable to the superintendent only on the due date of the notes and not on the actual date of issue of the piece of paper, that is, that the 2 per cent should apply as the notes are paid.

Alternatively, the superintendent could be given a note covering the applicable levy payable at the same periods as the terms of the notes.

MR. HOULDEN: Mr. Greenblatt will deal with clause 9 of the bill.

MR. M. G. GREENBLATT: With respect to notice, which is dealt with in clause 9 of the bill, relating to section 36 of the act, we have two minor but rather significant changes to suggest.

You will note that under section 36(1) anyone can make an application to the court to annul a proposal which has been ratified by the court after it had been accepted by the creditors.

Now, under this section as proposed, or under this amendment, notice has to be given of this application to annul the proposal only to the debtor and the creditors as the court may direct. But we suggest that perhaps the most interested party, not only for himself, but on behalf of the creditors, is the

trustee, and this subsection should be amended so that notice will also be given as a matter of right in the event of an application to annul to the trustee under the proposal.

Now the second change concerns subsection 5 of section 36 of the proposed amendments to the act. Under this subsection, in the event the proposal is annulled, the trustee shall forthwith call a meeting of the creditors, etc., for the purpose of appointing a trustee and inspectors for estate of the defaulting debtor. Now, at the stage where a debtor has defaulted under his proposal, and it has been annulled by the court, there is a good likelihood that there are no assets in the estate with which to pay the expenses and charges of the trustee who is obliged under this section to call a meeting. There is no choice on the part of the trustee but to continue with the administration of the estate. We would like to add, in order to avoid many situations where trustees may be compelled to carry on against their better judgment and against their own interest, the words "unless the court otherwise orders" so that if a trustee appears before the court and indicates he is not interested in continuing as trustee of the estate the court, then, would have the privilege of making an order appointing another trustee or call upon the Official Receiver to call the meeting and administer the estate. Therefore the suggestion is that subsection 5 should read, "where an order annulling a proposal has been made, the trustee, unless the court otherwise orders, shall forthwith call a meeting of creditors", etc.

MR. HOULDEN: Honourable senators, paragraph 10 of the bill, as Mr. Tassé pointed out, is probably one of the most important in the bill, and Mr. Biddell is going to speak to that.

MR. BIDDELL: Honourable senators, this question of the seizure of post-bankruptcy income of the debtor we all feel is most important. The proposed section 39A would require that in every personal bankruptcy the trustee must apply for an order in which the court in its discretion may order that some part of the post-bankruptcy earning of the debtor be seized by the trustee for the benefit of the creditors.

We believe that the enactment of a provision in this form would be a most regressive step. While such a provision would result in additional profits to collection agencies and some trustees, it would be of little benefit to creditors and would create an administrative and social problem most disadvantageous to the general public. We think that this section should be permissive only and not mandatory.

Personal bankruptcies are not a major problem in Canada. It is conceded, however, that they might become so if a great many of our people took the bankruptcy route to avoid the payment of their debts. The following statistics would appear to indicate that up to the present the problem is not a serious one.

Number of salary and wage earner bankruptcies: 1963, 1,588; 1964, 2,142; 1965, (Nine months), 1,400.

Personal bankruptcy is perhaps as much a social problem as a business one. The great majority of personal bankrupts are salary and wage earners, not businessmen. Their insolvency has come about through having borrowed or purchased on credit to finance a standard of living which their incomes can not afford. Most of these people make a reasonable effort to satisfy their creditors but for some the only way out is to go into bankruptcy.

Collection agencies acting for creditors eventually get around to the garnishee of the wages of these people and most employers refuse to put up with this inconvenience and the individual loses his job. We have seen many individuals pursued from job to job by garnishee orders. These people become a problem for the welfare agencies and in many cases personal bankruptcy is the only way out.

Most personal bankrupts owe only a relatively small sum to their creditors but this sum, together with the interest accruing on it, is ordinarily far greater than the income of the individual can service. It is easy to understand the frustration of the collection managers acting for the small loan companies and for the merchants who sell on extended terms when one of their debtors takes refuge in bankruptcy. We believe however that at least as strong a case can be made for a more thorough credit check before credit is extended, as for the enactment of punitive legislation aimed at the insolvent debtors. In any event, it seems reasonably clear that there will always be a certain number of persons who will unwisely take advantage of the easy credit which is virtually thrust at them these days by companies who appear determined to increase their sales volume.

It is difficult to understand what the proponents of this section wish to achieve. We think it unrealistic to expect that the funds which the bankrupts must contribute from their earnings will ever find their way in any volume to the unsatisfied creditors. Almost inevitably, such amounts as the debtors do pay will be largely used up in collection costs and trustee's fees.

We are currently seeing an increasing tendency for the Courts, urged on by creditors, to require personal bankrupts to contribute some part of their post-bankruptcy income to the trustee as a condition of obtaining their discharge. It is perhaps reasonable to expect that if the proposed section were enacted, the courts would set similar terms of payment to be made by debtors commencing with their bankruptcy. In our opinion, this would succeed only in punishing the debtor and enhancing the profits of the collection agencies and the trustees.

The courts are making orders such as requiring a stenographer to pay the sum of \$10 a week for two years to the trustee as a condition of obtaining her discharge. Another example is that of a man earning a modest salary being required to pay \$100 a month for fifty-five months to the trustee in order to obtain his discharge. It is not my place to express an opinion on the wisdom of such orders but it is quite clear that few, if any, trustees could ever effectively enforce collection in these cases using only their own staff. We think it highly probable that if this practice continues, those trustees who are active in the field of personal bankruptcies will likely make arrangements with collection agencies to enforce these orders. The prospect of much of the money eventually finding its way to the creditors would not appear to be too great.

A serious problem which is now being created and which would become infinitely worse if this section were to go unchanged is that creditors would be still further encouraged to make representation to the courts to force debtors to pay over some part of their post-bankruptcy income. We think it highly likely that the courts would continue these orders in effect long after the debtor's discharge; i.e., would require the trustees to keep these bankruptcies under administration for many months or even years longer than is normally the case because they would be under court order to attempt to collect what are frequently only trifling amounts of money.

It has been rather difficult for us to understand exactly what was in the minds of the proponents of this section.

Some of us do recall conversations with officials of the Department of Justice in the past in which one of the great concerns was that there were a number of individuals who went into bankruptcy, and then never did apply for their discharge. The particular individual we were talking to on that occasion thought that this was scandalous. Frankly, we could not see any great harm in it. If an individual went into bankruptcy and did not apply for his discharge then, in our thinking, that was his lookout. We think however that one of the reasons why this proposal was brought forward was to force these people to come up and obtain their discharge.

We are concerned, having regard to the way the courts are operating at the present time, that the courts would not cut off these orders. We think that the courts would make these orders carry on for many months and for many years in an attempt to punish the debtor, and to recover something from the creditors. There are much easier ways of inhibiting people who should not take advantage of the Bankruptcy Act from doing so than, in effect, setting up provisions that would emasculate the basic provisions of the Bankruptcy Act and saying: "It is all very well; you have gone through the bankruptcy proceedings but you are going to pay instalments to your creditors". That is not the way to do it. There are much easier ways of doing this than that which this section proposes.

Senator FLYNN: Which ways?

Mr. BIDDELL: I will come to that later on.

It may be that provision for the court making such orders is looked upon as a means of controlling the incidence of personal bankruptcy since a debtor will perhaps not be so ready to make an assignment if he is aware that he may only be substituting a garnishee by the trustee for that presently being issued by his creditors. If this is the objective we think that it could be achieved in a much more sensible manner.

In our opinion, the proposed section 39A should at this time be made permissive; that it should read that the trustee "may apply" for the order, and not "shall apply".

We are greatly concerned also about subsection (5) of section 39A, and consider that it should be eliminated entirely. The effect of this subsection is to say that if the court makes such an order, and an individual missed making a payment he would automatically be guilty of a criminal offence, and be placed in prison. In other words, we are reviving in subsection (5) the threat of a debtor's prison. We believe this is completely wrong.

We heartily concur with the idea that on such an application the court should have complete discretion as to whether it will require any contribution by the debtor, and to say how much it shall be. There have been suggestions that the court should require that the portion of the debtor's income seizable under the laws of the province should automatically be included in such an order. We think this is most unwise, since it would only perpetuate the completely unreasonable effect of the Lacombe law of the Province of Quebec, which is the cause of so many debtors in that province having to take refuge in personal bankruptcy.

In summary, we think that section 39A should not require the trustee to apply for this order. It should make it permissive, so that the trustee may use it in any flagrant case. We are very concerned also that the courts do retain discretion as to whether or not an order will be made, and as to how much the payments should be, and that it should not be automatically the amount seizable under the laws of the province.

Further, we think that this particular subject should be intensively studied by the new joint committee that is to be set up to consider the overall revision of the act. As I say, we think there are much better ways of doing what section 39A, as proposed in this bill, is set up to do.

The ACTING CHAIRMAN: Mr. Biddell, it just occurs to me that in the report of the Ontario Committee on Consumer Credit one of the recommendations was that we should do away with assignments of wages.

Mr. BIDDELL: That is a most important point, Mr. Chairman. There was a case taken to the courts on the point that an assignment of wages, which many collection agencies and money lenders are automatically obtaining in the course of their operations, continues in effect even after the debtor had gone into bankruptcy and has obtained his discharge. In other words, if you get a wage

earner to give you an assignment of his wages you have him on the wheel for life. Even bankruptcy could not release him.

Now, the courts in Ontario agreed with that in the first instance. The Court of Appeal threw it out, and now it is being carried to the Supreme Court of Canada. We believe it is nonsense to have the possibility of tying an unwitting wage earner to an assignment that would continue in effect and follow him from job to job for the rest of his life. We do not know what the Supreme Court of Canada will decide, but if it agrees that an assignment of wages is valid and continues beyond the bankruptcy discharge then we think there should be provision in the Bankruptcy Act to nullify such a decision.

The ACTING CHAIRMAN: Mr. Tassé, you are following these points, are you not?

Mr. TASSÉ: Yes, with great interest.

The ACTING CHAIRMAN: Please make sure, for the purposes of this committee, that section 39A is looked at very carefully by the department before you come back again. I think we are very much impressed with what the witness has to say.

Senator FLYNN: Mr. Chairman, I was wondering whether Mr. Biddell would be able to help me. The present section 39 provides, in my view, that the seizable part of the wages until the discharge belongs to the estate, and normally should be paid by the bankrupt to the trustee. How can we reconcile this with the discretion that is provided in subsection (1) of the new section 39A?

Mr. BIDDELL: You suggest, sir, that normally the seizable portion belongs to the estate. For many years this was not the practice. When an individual went into bankruptcy the trustee did not interfere with the bankrupt's income from salary or wages, unless he was earning an inordinately high salary. Now, a notice did go to the trustees in certain areas that they should go after these funds; that until there was a discharge they should seize these amounts. The effect of this was disastrous. The reason why many of these people, particularly in the Province of Quebec, were going into bankruptcy was because they could not live with the Lacombe Law, and they had to go into bankruptcy.

Senator FLYNN: I am just wondering whether section 39 should be amended, if we are to accept your suggestion, because as it stands the law says that this seizable part of the wages of the bankrupt belongs to the trustee for the benefit of the creditors.

Mr. HOULDEN: I think the answer would be that having it expressly provided for in section 39A, that section would overcome the provisions of 39.

Senator FLYNN: It may be with an order of the court, but without an order of the court the bankrupt has to pay to the trustee this part of his wages.

Mr. HOULDEN: That is right.

Mr. BIDDELL: The great majority of trustees are ignoring what would appear to be their duty under section 39; i.e., to collect the seizable portion of the debtor's post-bankruptcy income from modest wages or salaries. We think that section 39A should be amended to make it clear that it supersedes section 39 with respect to the post-bankruptcy income of a debtor derived from his wage or salary.

With respect to clauses 11 and 12 we have no comments, and we proceed to clause 13 on page 12. Mr. Greenblatt will deal with clauses 13 and 14 of the bill.

Mr. M. G. GREENBLATT, Q.C.: Honourable senators, clause 14 of the bill, which deals with section 96(1) of the act, is a very vital piece of proposed legislation, and it can have far-reaching effects, and can, in our opinion, as it

stands hamper the proper, effective and economical administration by a trustee and his inspectors of an estate under their charge.

As it stands, this proposed new subsection provides that a creditor who entered into a reviewable transaction with a debtor at any time prior to the bankruptcy of the debtor is not entitled to claim a dividend in respect of a claim arising out of that transaction until all claims of the other creditors have been satisfied unless the transaction—and this is important—is, in the opinion of the court, a proper transaction. I shall not refer to the balance of the new subsection, but let us examine what this first part means.

(Senator Hayden in the chair.)

It means that a related person definitely and automatically has a reviewable claim, and is automatically barred from sharing in the dividends unless that related person takes his reviewable claim to the court and has the court establish that the transaction was a proper transaction and, therefore entitled to share in the dividends in the same way as anybody else.

We believe as it stands now that the courts and the estate of the debtor will be clogged with endless court actions which will take months and months, and possibly with appeals going all the way to the Supreme Court, years before an estate can possibly be closed and before a dividend can be distributed to those who are entitled to a dividend, that is, the ordinary unsecured creditors whose claims are not under review. If these actions taken by these related creditors in connection with their reviewable claims are maintained by the court there is a good likelihood that the court may order that the costs be paid by the estate out of the mass available for distribution.

On this point we are not sure who will be stuck with the court costs, because there is no direction and there are no guidelines for the court with respect to costs when allowing a reviewable claim as a proper transaction.

Our committee, most respectfully, has come up with this recommendation to the department and to the Senate reviewing this legislation. We suggest that section 96(1) repealing section 96 of the act should be amended so that a creditor who entered into a reviewable transaction should be entitled to claim a dividend in respect of a claim arising out of that transaction, unless the trustee and the inspectors, after reviewing the claim, have disallowed the same and such disallowance if appealed is maintained by the court, etcetera, etcetera; and then continue with the rest of the intent of the proposed amendment.

In that way, a reviewable transaction which in the opinion of the inspectors and trustee, after examination and after advice by counsel and accountants, etc., is likely to be considered by the court as a proper transaction, can then be approved; and if they think otherwise, the trustee can then disallow the claim. Upon disallowance, it would be up to the creditor to take his proceedings before the court and upon failure to do so the disallowance would stand.

This happens in estates at present where there is a creditor, whether secured or unsecured, who has a claim that the trustee and inspectors think is not valid. The trustee may disallow it and the creditor can appeal within 30 days. If he does not do so within 30 days he fails to receive a dividend.

We say the same procedure should be followed in the case of a reviewable claim. We say that if it is disallowed, then it is either for the creditor to challenge the trustee, and if the creditor takes up the challenge it is then for the court to review the transaction and declare whether it is a proper transaction or otherwise.

The CHAIRMAN: We are just talking about the question of onus, are we not?

Mr. GREENBLATT: No, not only the question of onus, but also about the question of procedure and machinery.

The CHAIRMAN: But as drafted, the onus was on the person who is interested in the reviewable transaction to prove that it is a proper transaction.

Mr. GREENBLATT: But he can only do it by proceedings before the court. He cannot come before the trustee and inspectors and say, "I have a reviewable claim—here is my proof that this is a perfectly valid transaction." The trustee and inspectors can agree, but they are forced to tell him to go to the court to prove his claim.

The CHAIRMAN: All you want to do is to give him the right to assert that it is a proper transaction earlier than going to the court?

Mr. GREENBLATT: That is right.

Senator FLYNN: Mr. Chairman, if I understand correctly, a reviewable transaction would be one that has been reviewed by the trustee, or eventually by the court. If it is only reviewable until a decision has been made by someone, it is an ordinary claim.

Mr. GREENBLATT: No. Under the definitions of related persons, related corporations, persons related by blood, when they have claims, their claims are automatically reviewable claims. Those related persons and related creditors are deprived of certain rights in connection with the administration of the estate, such as voting etc., and by this section are deprived of ranking for a dividend, unless they take court proceedings.

Senator FLYNN: But who does that?

Mr. GREENBLATT: It is automatic by the act.

Senator FLYNN: But the trustee has to classify them as such, does he not?

Mr. HOULDEN: On his suggestion.

The CHAIRMAN: The question whether or not a transaction is at armslength, of course, is a question of fact. And it may be obvious, but if they are at armslength, then it is a reviewable transaction. At some stage some one has to decide whether or not they are at armslength, and I presume, in the first instance, it is the trustee.

Mr. HOULDEN: That is right.

Mr. GREENBLATT: Except, Mr. Chairman, that he is obliged to put it in the category of a reviewable transaction. Where there exists actual blood relationship between the debtor and creditor, he has no choice.

Senator FLYNN: But he has to know that such a relationship exists.

Mr. GREENBLATT: That comes out under the general examination of a debtor before the official receiver, in most cases.

Senator FLYNN: They may or may not decide upon that.

Mr. GREENBLATT: Someone has to find out whether so-and-so is a brother or son or father of the debtor.

Senator FLYNN: What I am suggesting is that if a transaction has been reviewed or classed as a reviewable transaction, then it is worth what it is worth after that review. I really do not see the use or necessity of this section. It is like any other transaction under section 60 and the following.

Senator BURCHILL: Mr. Greenblatt, you included inspectors and trustees. Do inspectors rank with the trustee in determining the validity of a claim?

Mr. GREENBLATT: *Prima facie* and primarily the trustee is there to take his instructions from the inspectors who have been appointed by the creditors and ratified by the court as being the ones who are the watchdogs, and they are to administer the estate, see to the realization of the assets and distribution of the proceeds, etc. The trustee may, where he thinks certain acts should be done and certain procedures ought to be taken, and if he cannot get the permission of the inspectors to perform these acts or to take these proceedings, apply to the court for authorization to do so on his own. However, by and large the trustee acts on the instructions of the majority of the inspectors appointed by the creditors.

Mr. BIDDELL: All we want here is permission, Mr. Chairman, so that the trustee and inspectors can accept a transaction which by definition is reviewable, without the requirement that it be reviewed by the court. It is perfectly satisfactory on the face of it. We do not want to have the thing go to court.

Senator FLYNN: I think we are in agreement on that. It is not the point that I want to make at all.

Mr. HOULDEN: You think the whole thing should be out?

Senator FLYNN: I do not see the necessity of this at all.

Mr. HOULDEN: We think it is an important point.

Senator FLYNN: It may be.

Mr. GREENBLATT: In the section as amended, under that provision of the act regarding reviewable transactions, claims would be left high and dry.

Senator FLYNN: Take an example of one. Suppose something has been sold belonging to an estate of the bankrupt corporation, which was worth \$1,000 and sold for \$100. The transaction is reviewed. Then the buyer, the purchaser, has to remit to the estate of the bankrupt corporation the object of the sale. Then where does he stand with respect to the \$100 that he has paid for it? He has a claim for \$100, if he remits the goods worth \$1,000. Do you suggest that this section 96 would say his claim for \$100 will be paid only after all the others have been paid?

Mr. BIDDELL: No, no.

Mr. HOULDEN: This is designed to cover the point. Suppose a person has arranged to set up as a liability in a limited company \$10,000 for good will, with no consideration given at all, and three months later the company goes bankrupt, and the creditor proves a claim to \$10,000. Under the present law it was all right, but under section 96 he cannot claim. This is a reviewable transaction and he will not be allowed, and he should not be allowed.

Senator FLYNN: It will be reviewed?

Mr. HOULDEN: This is one of the things which will be reviewed by the trustees and inspectors and disallowed.

Senator FLYNN: What is the result of the review of the claim? That is what I have been trying to find out.

Mr. BIDDELL: We are suggesting the review first be made by the trustee and inspectors. If they are satisfied that the claim is a valid transaction, it should stand and should rank for dividend. If he and the inspectors are not satisfied, the claim should be disallowed and it should be left for the court to determine whether it is a proper transaction, and where that occurs, whether the related creditor or the creditor having a reviewable claim should or should not rank for dividend.

Senator FLYNN: It is the net result of the review that I should like to know.

Mr. GREENBLATT: Please do not confuse the sections under the amendment dealing with reviewable transactions, which are being attacked, not because the party to the reviewable transaction is a creditor. He may no longer be a creditor. Where the transaction is attacked, it is because it is a fraudulent one and because it was an irregular transaction and the creditors at large have been adversely affected as a result of that particular transaction within a certain period of time.

That has nothing to do with this particular section, because this section only refers to where a creditor has a reviewable claim. He is already a creditor and he has the reviewable claim and it is not being attacked or being interfered with under the provisions of preference or fraud. His claim is there. Because of the definitions under the amendments, the trustee has no right to review the transaction and the person having the reviewable claim has no right to share in

the dividend, unless he takes court proceedings to prove that he has a justifiable claim and is entitled to participate in the dividend.

The CHAIRMAN: You do not need these amending provisions to deal with a provision where there is basically some fraud involved, where there is manipulation between a debtor and someone related to him. You could do that now.

Mr. GREENBLATT: That would be done automatically by the trustees and inspectors.

The CHAIRMAN: That is right. This act says that if there are certain relationships, one is not entitled.

Mr. GREENBLATT: Unless you take court proceedings to prove that you are entitled.

The CHAIRMAN: If words were added in section 96(1): "Unless the transaction was in the opinion of the court or trustee, as the case may be"—

Mr. HOULDEN: As Mr. Tassé pointed out this morning, one of the sections of the 1949 act which has done most to cause difficulty with the act, has been the provision for summary administration. Mr. McQuillan will deal with clause 15 which sets out the proposed amendment to the summary administration provisions.

Mr. MCQUILLAN: May I refer back to my remarks under clause 7, on page 7 of the bill, relating to section 32B. I do not recall whether I made it perfectly clear that when creditors have rejected the proposal and the meeting converts itself into a meeting of creditors, the appointment of the trustees should be by ordinary resolution.

Clause 15, on page 13 of the bill, deals with Summary Administration. Perhaps this is one of the few points, if not the only point, in Bill S-17 where all the groups we represent suggest that, instead of amending the section, these sections should be completely repealed.

The concept of summary administration is based on the idea that the small debtor, the individual debtor or small estate, should not be deprived of the right to use the Bankruptcy Act simply because the estate is small. It was felt that by streamlining the procedure, eliminating the publication in newspapers, reducing the mailing from registered mail to ordinary mail, and so on, this would be helpful.

Some years ago in a series of small estates some administered under ordinary administration of the act, and some administered under summary administration of the act, were examined. The average saving in handling the small estate under summary administration rather than under the general provisions of the act was forty dollars per estate only. For this minimal saving we have opened the door to wide abuses.

I think the history of the section is instructive. This summary administration appears for the first time in the 1949 act. It was borrowed almost verbatim from section 129 of the English Bankruptcy Act. The flaw in our act is the flaw which the English act apparently saw possible under this type of legislation and carefully avoided.

Under the English act—where we got these sections—it is provided that where anyone other than the official receiver who is an officer of the court is named as trustee to administer these small estates, the summary order is set aside and it must be dealt with under the general administrations of the act. The creditors have the right to appoint someone other than the court official to act as trustee, but if they do, the summary order is gone and the estate must be administered under the general provisions of the act.

Since its inception in our act in 1949, it has caused constant trouble. Most of our group here was before this committee in 1962 and at that time only one of the five major organizations represented here by this group had a feeling

that, in an emasculated form, it may still serve some particular purpose in the act. This group has since been converted. Everyone of the groups here this morning recommend unanimously that these sections should not be amended, but that sections 114 and 115 should be completely repealed, and that estates, small or large, should be administered under the general provisions of the act and that the distinction of summary administration should no longer appear in our Bankruptcy Act.

The CHAIRMAN: In 1962 we heard evidence that there was support from some quarters for the continuance of summary administration.

Mr. McQUILLAN: I believe it was the Metropolitan Toronto Board of Trade. Since then they have joined with the other groups which appeared at that time before you. They agree now that summary administration should go.

The CHAIRMAN: They have all hit the sawdust trail now.

Mr. HOULDEN: The next clause, is clause 16, on page 14 of the bill. As the superintendent has pointed out, the act has set up an entirely new principle, under which superintendent will have a wide power of investigation where a transaction is suspected of being fraudulent. This section, I believe, is to tie in with that, and is to delegate to the official receiver a power of investigation. For those of you not too familiar with bankruptcy proceedings, each province is divided into a bankruptcy district, and each district is divided into bankruptcy divisions. Usually there are one or more counties in each division. In Ontario we have, I believe, 16 divisions. In each division there is what is called an official receiver. The position has never amounted to very much. The official receiver has assignments, receiving orders and proposals filed with him, and conducts the first meeting of creditors and then he sends all the papers down to Toronto.

We do not feel that paragraph 16 will add to the bill whatsoever, and we recommend that it should not be put in. We do not believe that the official receiver would have any useful function under the section.

Coming now to section 17, you will remember that Mr. Tasse said that under the bill a corporation could not apply for a discharge. But this will leave a gap. Sometimes a bankrupt corporation, pays its creditors in full, and there is a surplus. When that happens it is necessary to have the corporation discharged and appoint a liquidator to wind it up on a voluntary basis so that the surplus funds may be paid to the shareholders. The trustee in bankruptcy would have no power to do that. We recommend that paragraph 17(3a) should be amended to add the words "unless it has satisfied its creditors in full."

Senator FLYNN: You could always in a case like that get a bankruptcy annulled, could you not?

Mr. HOULDEN: We feel if the section were amended it would cover the situation which I have outlined.

The CHAIRMAN: Reverting for a moment to the previous section, and the activities under section 16, and dealing with the investigatory authority of the Superintendent. If there are not sufficient words to cover the official receiver, could they not be put in there?

Mr. HOULDEN: We do not feel there is any point to this paragraph.

The CHAIRMAN: But it would appear that there are enough words in the section 3 to enable him to invoke whatever power he thinks right.

Mr. HOULDEN: That is correct. The next paragraph is paragraph 18, and Mr. Biddell will speak to that.

Mr. BIDDELL: Honourable senators, this is a paragraph that is very dear to my heart. It is believed that the proposed section 128A was taken from a brief submitted by the Canadian Society of Chartered Accountants. With reference to the proposed section 128A of the bill, I believe that this recommendation arose out of a great deal of study by the accountants and others in an attempt to find

an acceptable solution to the problem which presently exists because individuals can and do guide a company into bankruptcy and immediately re-enter business behind the protection of a new incorporation.

A great many business organizations made representations that in some manner the activities of these persons should be restricted. The accountants and others devoted a great deal of time to this problem and in consultation with the major credit agencies came to the conclusion that there should be available on the public record a summary of the activities of the person or persons who had a financial interest in a company, and who were primarily responsible for directing its affairs up to the time of its bankruptcy. It was believed that if this record contained a statement of opinion by the trustee and the inspectors acting in the bankruptcy as to the activities of these persons then businessmen to whom these same individuals applied for credit in their new ventures would have an opportunity to protect themselves. Both the Accountants' Committee and representatives of major credit associations believe this to be a far more practical solution to the problem of inhibiting the re-entry of chronic defaulters into business than any attempt to positively bar these people or set up minimum capital requirements, etc. This recommendation had a high priority in the accountants' list.

The proponents of the bill have apparently recognized the value of the information concerning the identity of the persons responsible for the bankrupt corporation's activities and of a statement of opinion from the trustee and inspectors. Unfortunately, the proposed section 128A would only make the significant part of this information available to the Superintendent, not to the general public.

Now we would propose two or three changes in this section 128A. First, in subsection (a) which is at the foot of page 14 of the bill we would suggest it is not necessary that this report list the directors and officers of the companies. It should only list those actively in charge of the affairs and under whose direction it went bankrupt.

In many cases we find a corporation has gone bankrupt and the directors or officers are merely figureheads, in many cases just minor employees set up by the real owner or operator of the business, and there is no real purpose in putting the names of these people in the public record and perhaps having them adjudged guilty by association with the name of the person or persons to whose activities we wish to call attention.

The CHAIRMAN: What you are suggesting would involve taking out the words "the names and addresses"—

Mr. BIDDELL: Just take out the words "directors and officers of the corporation"—that is what we want to eliminate.

The CHAIRMAN: All right.

Mr. BIDDELL: At the top of page 15 of this bill we think that after the word "trustee" in the first line there should be the words "had a financial interest in the debtor" because we are only interested in naming those persons who had something to gain, who in fact owned this business and were directing its affairs. There is no point in putting on record that this fellow was an employee or general manager and the company got into difficulties. We are suggesting that the people who carried it on behind the protective features of the law of limited liability, got into difficulties, went bankrupt and then started over again, are the people concerned.

The CHAIRMAN: But the man may be an employee or an officer of the company, and he may be a bad manager. He may do all these things that lead to bankruptcy, but if he is getting a salary in the meantime—

Mr. BIDDELL: We do not think that position is the most important. We have no great objection however to leaving this particular section as it is because it

will still get at the fellow who owned the business and was running it into the ground deliberately.

The CHAIRMAN: I thought it would be designed to get anybody who had a part in that.

Mr. BIDDELL: Down in subsection (c), in the first line, we would want the statement of opinion by the trustee to be accompanied by a statement of opinion by the inspector, and if you would put the words "and inspectors" after "trustee" in subparagraph (c), it would cover the situation.

Then the really important amendment we propose to this section is that the information required under subparagraphs (b) and (c) also be sent first of all to the individuals who have been named in order that they will have an opportunity to apply to the court for a review and a deletion of that report if necessary, but after they have had an opportunity to apply to the court, if they have been named, then they will appear, in the report filed with the official receiver, and thereafter on the public record. The really significant aspect of this, is that these were the people who in the opinion of the trustee and inspectors failed to account properly for the bankruptcy or for the deficiency in the company's assets and liabilities, and were responsible for the bankruptcy, which came about as a result of the activities described in subparagraph (c).

The way this has been put in the bill means that the information is now available to the Superintendent, as of course it should be. The original idea was that it should be available to credit-granting agencies so that it would be made available to the business public. Unless the information required by subparagraphs (b) and (c) is also eventually made available on the public record, the whole section loses its point.

The CHAIRMAN: Would you revert to (c) for a moment. You seem to have some duplication there if you say "a statement of opinion by the trustee and the inspectors with respect to the probable causes of the bankruptcy arrived at after consultation with the inspectors and other persons".

Mr. BIDDELL: Well, we felt that it was only proper for the trustee to arrive at his opinion after consultation with the inspectors. We want to avoid the possibility of a report being filed solely by a vindictive trustee. We feel that his report should be signed by the inspectors; that there should be an indication of whether the inspectors disagreed with or concurred in his report.

The CHAIRMAN: Are you suggesting that the trustee should compel the inspectors to make a report?

Mr. BIDDELL: No, he makes the report, and this subsection requires him to consult with them. We feel it should be necessary that the report contain a statement from or the signatures of the inspectors indicating that they concur in it, or disagree with it.

The CHAIRMAN: How do you compel the inspectors to sign something they do not want to sign?

Mr. BIDDELL: If they refuse to sign then that could be included as an adjunct to the report. The report could indicate that it was impossible to get the inspectors to sign.

The CHAIRMAN: What was the other suggestion? You said that there should be amplification in one subsection.

Mr. BIDDELL: That is subsection (2) which provides that a report to the Superintendent pursuant to paragraph (a) of subsection (1) must include the information in paragraphs (a), (b) and (c). This is so that the whole report will get on the public record, and perform the purpose for which the whole section was designed. Otherwise, the only person who is going to get the significant part of this report is the Superintendent. It is not going to be of any value to the business community at all, other than that arising out of any action the Superintendent may take.

The CHAIRMAN: The Superintendent can leak it out, can he not?

Mr. BIDDELL: Well, we think this is the best way to do it; that it should get on to the public record.

As one final change, we think that the words "official receiver" in the second to last line of subsection (3) should be changed to "registrar", because in some jurisdictions the official receivers do not keep records, and we think that the proper place for this report to be eventually filed so that it can be made more easily available to credit agencies is with the registrar.

Mr. HOULDEN: The next clause with which we wish to deal is clause 19, and Mr. McQuillan will deal with that.

Mr. MCQUILLAN: Honourable senators, in paragraph (h) the drafters have certainly done an excellent piece of work in covering an area which up until now has caused a great deal of trouble, and which has not been properly covered in the act. They are to be congratulated for that.

I will put aside for the moment paragraphs (f) and (g). We have no suggestion to make in respect of paragraph (h), and only a minor suggestion to make with respect to subsection (3) on page 17. Subsection (3) reads:

Nothing in paragraph (h) of subsection (1) shall be construed to apply to a sharing of trustee's fees among persons who together act as the trustee of the estate of a bankrupt.

And we think there should be added the words "or as joint trustees under a proposal". This would make for an acceptable sharing of fees.

I come back then to paragraphs (f) and (g). We all realize what the bill has in mind, namely, to stop improper solicitations of assignments in bankruptcy, or petitions in bankruptcy. The question is whether the wording of paragraphs (f) and (g) is so wide as to sweep up the normal dealings that a trustee has with people who eventually become bankrupts.

For example, a debtor company which realizes it is in trouble consults a reputable trustee, who is a chartered accountant at the same time, and discusses its problem. The trustee, as a C.A., tells the company in all good conscience that he feels the problem is such that it cannot continue, and that it should make an assignment in bankruptcy. Technically, this would be canvassing or soliciting or recommending an assignment in bankruptcy.

An attorney may, in dealing with certain clients over the years, be in a position of having certain information about a certain debtor's operations. He is, I think, in good conscience, being under retainer, bound to contact his client and inform him that he understands certain things are going on which if permitted to continue will cause the client to suffer a great deal more, and suggests that a petition in bankruptcy should follow.

I think the provisions of paragraphs (f) and (g) are too wide, and should be carefully reviewed, and perhaps put over until there is a further revision of the act in order that they may be properly dealt with. In other words, it is my opinion that there should be control over improper solicitation and canvassing, but it should not lay open to blackmail a trustee who proceeds in a normal businesslike way, or an attorney who proceeds in the same manner, where an assignment might result or a petition in bankruptcy might follow.

The CHAIRMAN: Mr. McQuillan, I notice that paragraph (f) of section 160 of the act starts with the words: "A person who . . .". Then, when you come down to paragraph (f) as it is in the act you see that it reads:

being a trustee, solicits or canvasses a person to make an assignment under this Act;

The proposed amendment is:

A person who . . .

(f) directly or indirectly solicits or canvasses any person to make an assignment under this Act. . .

So, it covers a broader area than just the trustee.

Mr. McQUILLAN: That is right.

The CHAIRMAN: What do you think paragraph (f) is aimed at? Is it the trustee who gives this kind of advice to get business, or is it the lawyer who advises, or any member of the general public, or even some creditor?

Mr. McQUILLAN: The actual abuses under the act as it is now, senator—

The CHAIRMAN: No, under paragraph (f) as it stands in the act it is clear it is the trustee, but the proposed (f) seems to cover the whole wide world.

Mr. McQUILLAN: That is right—any person.

The CHAIRMAN: Is there any reason for this? What mischief is it trying to get at?

Mr. McQUILLAN: There have been cases where an individual, not a trustee but as an agent for a trustee, checks the lists, for example, of seizures and bailiff's services, and so on, and certain credit reports, and who will approach a debtor, or even a small business, purporting to consolidate the debtor's debts, and when the debtor asks for advice he is told: "There is no solution for you but to make an assignment in bankruptcy. The trustee in whose hands you will be will take care of you well. You will be charged such-and-such a fee, and in six or eight months you will get your discharge". This agent receives a commission for this, and the trustee earns a fee. This is the mischief that has been going on. It is a type of solicitation that unquestionably should be stopped. It is a type of canvassing that should be prohibited. The question is whether we are going too far—

The CHAIRMAN: You are covering the whole world by this amendment.

Mr. McQUILLAN: Yes, and if the person soliciting or canvassing is a good and conscientious trustee who would recommend a client who comes to him to make an assignment in bankruptcy he will fall within the meaning of soliciting or canvassing.

The CHAIRMAN: The kind of example you gave would be covered if you had in the present paragraph (f) the following words "being a trustee, directly or indirectly canvasses a person". If he uses an agent I would not think you would need any other words.

Mr. McQUILLAN: But, what is soliciting and what is canvassing?

The CHAIRMAN: You should not be asking that question these days.

Mr. McQUILLAN: Are we to condemn the trustee who acts in a perfectly normal way, receives this person in his office and tells him: "Yes, I think you should make an assignment in bankruptcy"? Is that canvassing? Under this wording it might well be.

Mr. R. W. Stevens, Counsel, Credit Granters' Association of Canada: That is already covered in the act.

Senator FLYNN: How does a trustee obtain his appointment in an assignment. Is his appointment the responsibility of the official receiver? How, in fact, does this happen?

Mr. McQUILLAN: That is what the act says, that the assignment is taken to the official receiver, and the official receiver to the best of his determination having regard to the wishes of the creditors names a trustee. In practice that simply does not work. The official receiver has no competency to canvass the creditors at this stage as to whether they want Mr. Smith or Mr. Brown. He appoints the trustee named on the assignment.

Senator FLYNN: On the assignment? I see. I am wondering whether you would not be able to cure this ill if the appointment of the trustee in the case of an assignment was made only by the creditors, and in the meantime the Official

Receiver would be acting as an interim receiver, or something like that. That is the difficulty, to my mind.

Mr. MCQUILLAN: It creates great problems. There may be cases where he makes an assignment, and one of the most beneficial functions we can perform is to continue the operation of the business, in the meantime.

Senator FLYNN: Or if the Official Receiver was able to canvass the creditors before making the appointment of the trustee, perhaps?

Mr. MCQUILLAN: That is true. In theory, senator, this is the way it should be done, but the Official Receiver is in no position to do so in practice. He has creditors, perhaps in Virginia, Newfoundland, Vancouver, and many other places. How can you contact them? The creditor in Vancouver, for instance, does not know one person from another in other parts of the country.

Senator FLYNN: There is no doubt that if the trustee is appointed by the debtor he will not have the same facilities to collect all the property of the estate.

Mr. MCQUILLAN: Of course, at the first meeting of creditors, the creditors then may, by special resolution, change the trustee. It is very difficult.

The CHAIRMAN: But it is the petitioning creditor who in his petition for the appointment of a receiver names some person as trustee?

Mr. MCQUILLAN: Yes, that is on the petition; but on the assignment the debtor chooses his trustee.

Senator FLYNN: Yes, this is the difficulty. It is in the case of assignments that I think we should find a correction. I do not think you have it here in this section 19.

The CHAIRMAN: What you are suggesting, Senator Flynn, is that it may be corrected if in an authorized assignment the Official Receiver has the right to name a trustee. Well, he does have that right.

Senator FLYNN: He can name anybody, but in practice he does not.

Mr. MCQUILLAN: He has no way of determining who the creditors want as a trustee.

The CHAIRMAN: But maybe he knows who they don't want or should not have.

Mr. MCQUILLAN: Under the administration of our new Superintendent of Bankruptcy, one trustee will be as good and as competent as another. This we will hope for.

The CHAIRMAN: Well, he will have to be—or else.

Mr. HOULDEN: Mr. Biddell wishes to say a few words with regard to Part X.

The CHAIRMAN: With regard to consolidation.

Mr. BIDDELL: Honourable senators, once again we are faced with Part X dealing with a scheme for the orderly payment of debts of individual bankrupts. This Part appears to be relatively unchanged from the bill introduced at previous sessions of Parliament. We do not wish to comment on Part X except to point out that, among others, the Committee of The Canadian Institute of Chartered Accountants did a very thorough study of this bill and in its brief recommended substantial changes to these sections that appear in Bill S-17.

We believe that the recommendations made by the accountants would provide for a much more workable scheme than the proposed Part X would contribute.

We think it most unlikely that the provinces of Ontario and Quebec in particular will find it practical to adopt Part X in its present form. We would hope that at an early date the Government would be prepared to consider amendments to Part X along the lines proposed by the accountants in order that

a scheme which could reasonably be adopted in the larger centres of population in Eastern Canada could be made available.

The CHAIRMAN: What is the suggestion?

Mr. BIDDELL: Well, that suggestion is contained in about 20 pages of a brief prepared by the Institute of Chartered Accountants and submitted to the Department of Justice. The accountants were drawn from across Canada and spent months in the preparation of the brief. Part X is completely impractical for major centres.

The CHAIRMAN: In 1962 they made some submissions in respect of Part X.

Mr. BIDDELL: The survey of which I am speaking was made during the past two years. The Brief containing it is on file with the Department of Justice.

Mr. HOULDEN: The last section we wish to speak on is section 22, on page 28 of the bill. This section provides when the act shall come into force. It is strange wording, to say the least, and we feel it might cause considerable difficulty.

Without going into details, I would suggest that the act should only apply to bankruptcies which are filed after the act comes into force, or proposals that are filed after the act comes into force, and that it should not affect proposals and bankruptcies in existence at the time the act becomes law.

The CHAIRMAN: I note that subsection (2) of section 22 says, "This act applies to proposals and bankruptcies pending..."

Mr. HOULDEN: We do not know what it means. We have tried to make sense of it, without success.

The CHAIRMAN: I know what the words "filed on the day" mean, but what does "pending" mean?

Mr. HOULDEN: We do not know, and we suggest that it be made quite clear that it only applies to Bankruptcies or proposals filed after the Act comes into force.

Honourable senators, on behalf of my colleagues I wish to thank you very much for the attentive hearing we received this morning. We have been able to put before you all the points we had to submit.

The CHAIRMAN: Thank you.

The next group to be heard from is the Credit Granters' Association of Canada. Mr. R. W. Stevens, counsel for the association, will make the presentation. Next to him is Mr. R. C. Helen, president. Next to Mr. Helen is Mr. Mackenzie.

The brief has been distributed. Is there likely to be some duplication of what we have already had before us, Mr. Stevens?

Mr. R. W. Stevens, Counsel, Credit Granters' Association of Canada: There may be some duplication, Mr. Chairman.

May we at the outset again adopt the words of our predecessors who made this presentation to you, and commend the Department of Justice on an excellent job in drafting the amendment to the bankruptcy bill.

In addition, we also adopt substantially the arguments they have suggested to you today.

By way of background, however, we have a basic difference from the four groups who are amalgamated into one and which were so ably represented.

First of all, it is our submission that there is no alleviation of personal bankruptcies. In effect, they are increasing throughout the rest of the country. In the Province of Quebec it was a particularly bad situation three years ago. It is lessening there, but increasing in the rest of the country. So I think we still have a national problem.

The second point Mr. Biddell commented upon was the question of the Lacombe legislation and indirectly to Part X of this bill dealing with the orderly payment of debts.

I think it is obligatory at this point to direct to the attention of this committee the fact that the Lacombe legislation of Quebec, and the provision for the orderly payment of debts in Bill S-17 is ineffective in so far as the debtors are concerned. If the debtor does not wish to take advantage of this umbrella of protection afforded by these various types of legislation he need not do so.

With that background in mind, I would like to go directly to our brief, because, as you will see, particularly we get to the question of the orderly payment of debts. There may be a difference in the approach taken from that of the various associations that were last represented.

The comments on Bill S-17 of the current session of the Senate entitled "An Act to amend the Bankruptcy Act" (hereinafter called the Bill) have been prepared by the Credit Granters' Association of Canada (hereinafter called the "Association").

The Association has in excess of 5,000 members and is divided into 133 separate credit units which are located in every major urban area in Canada. The membership is composed of:

- Chartered banks
- Consumer loan companies
- Fuel companies
- National department stores
- Petroleum companies
- Retail stores
- Sales finance companies

In November of 1962 the Association submitted to this Committee its comments and recommendations respecting Bill S-2 of the First Session of the Twenty-Fifth Parliament of The Senate of Canada which in the main related to the portion of Bill S-2 entitled "Orderly Payment of Debts". The Association has been gratified to note that the majority of its 1962 recommendations have been incorporated in Part X of the Bill. However, with the contemplated amendments to The Bankruptcy Act for the purpose of correcting abuses that have arisen since its proclamation in 1949 and because all phases of the bankruptcy legislation are relevant to the activities of the members of the Association and particularly the summary administration sections of the Act, the Association takes this opportunity of commenting thereon.

1. Since the proclamation of The Bankruptcy Act in 1949 cost of living, wages and other elements of the economy have increased generally. It is the submission of the Association that in light of these substantial increases the use of "one thousand dollars" in the definition "insolvent person" is no longer realistic and it is therefore recommended that such definition be amended by changing "one thousand dollars" to "three thousand dollars".

Amend Section 2(j) of the Act (definition of "insolvent person") by changing in line 4 the words "one thousand" to read "three thousand".

(Numerical references throughout the brief are to the Bankruptcy Act either as it exists or as outlined in the bill.)

If I may interject, I concur with Mr. Tassé's analysis. The question of insolvency is a question of fact.

This should be read in conjunction with the recommendation which we will be making in regard to the Orderly Payment of Debts provision of the act.

The CHAIRMAN: If you increase \$1,000 to \$3,000 and then some person wants to come under the Orderly Payment of Debts, he would have to be the

possible subject of bankruptcy, in order to get the benefit of Part X, would he not?

Mr. STEVENS: No, sir.

The CHAIRMAN: Part X is part of the Bankruptcy Act, therefore it would have the bankruptcy features.

Mr. STEVENS: I think it is primarily dealing with the hiatus that has arisen from a constitutional standpoint, sir, as to whether or not the Orderly Payment of Debts Act, as originally passed in Alberta and Manitoba, was *intra vires* the province. It was held *ultra vires* because it dealt with or infringed upon the bankruptcy laws.

The CHAIRMAN: Would it not be possible to have an Orderly Payment of Debts Act in a province if you were to separate from it the element of bankruptcy?

Mr. STEVENS: It is an intriguing suggestion but I would think that, as to this type of legislation that is contemplated here, the other provinces, with the possible exceptions of Ontario and Quebec, would be quick to adopt the legislation. I do not at this time wish to express any opinion on the constitutionality of the division court in the Province of Ontario or the comparable provisions in the Province of Quebec.

The CHAIRMAN: Our job is big enough without doing that.

Mr. STEVENS:

2. The introduction of Sections 2A and 2B are novel and have far-reaching effects. They will no doubt go a long way to curb abuses which have existed under the existing legislation. However, it is respectfully suggested that these provisions may not go far enough in one respect and may go too far in another.

3. Section 2B (3) (e) provides that "persons are connected by blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other". No provision is made for collateral, as opposed to direct lineal, blood relationships. Specifically, the definition does not include uncles, aunts, nephews and cousins. It is appreciated that subsection (2) of Section 2A provides that it is a question of fact whether persons not related to one another through blood relationship are dealing with each other at arms length but because of the experience of the members of the Association we believe it desirable to create a presumption that relatives within the more broadly defined group, including those specifically mentioned above, are deemed to be related persons within the meaning of the Act.

Amend Section 2B (3) (e) to read as follows:

(e) Persons are connected by blood relationship if:

- (i) one is the child or other descendant of the other, or
- (ii) one is the brother or sister of the other, or
- (iii) one is the uncle, aunt, cousin, nephew or niece of the other;

4. It is respectfully submitted that the effect of Section 2A (3) is to create a conclusive as opposed to a *prima facie* or rebuttable presumption. In this respect it is submitted the legislation may go too far and that in certain circumstances it should be open to the creditor to establish as a matter of fact that a transaction was at arms length notwithstanding that it was between related persons. Any number of businesses in Canada have been financed in the first instance by a father or an uncle providing a bona fide loan to a son or nephew to enable the latter to start a business. There would seem to be no reason why, in the event that the business becomes insolvent through misfortune or change in economic conditions, such a creditor should not be in the same position as other creditors in the same way as a bank would have been had it advanced funds to the business on the guarantee of the father or uncle.

Amend Section 2A (3) to read:

- (3) It is a question of fact whether persons related to one another within the meaning of Section 2B were at a particular time dealing with each other at arms length, but they shall be deemed *prima facie* not to deal with each other at arms length while so related and the onus of proving that they did deal at arms length shall be upon the person who alleges it.

5. In certain commercial transactions involving a loan to a corporation it is common practice for the lender to take a pledge of shares or to acquire some measure of control over the shares. This is particularly true in the case of loans to small private companies. The present form of the proposed Section 2B (3) (c) would result in making the lender a related person and, as such, subject to the provisions of Sections 64A, 75 and 96. Section 64A is the section which extends the time for the purpose of determining whether or not a preference has been given.

Amend Section 2B (3) (c) to read:

- (c) A person who has a right under a contract in equity, or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares in a corporation, or to control the voting rights of shares in a corporation, shall, except
- (i) where the contract provides that the right is not exercisable until the death of an individual designated therein, or
 - (ii) where the contract is collateral to a transaction entered into at arms length,
- be deemed to have the same position in relation to the control of the corporation as if he owned the shares.

6. The addition of paragraph (h) to Section 160 of the Act is indeed desirable and will serve to correct a number of abuses that have arisen under The Bankruptcy Act by virtue of the unscrupulous activities of certain licensed trustees. It is the recommendation of the Association, however, that this paragraph be rephrased to make it an offence if the trustee receives any consideration or remuneration of any nature or kind beyond the remuneration payable out of the estate, regardless of the source of such consideration or benefit, in any way connected with the estate under the trustee's administration. The particular abuse which we wish corrected is where the individual who is insolvent with no assets is solicited or voluntarily goes to an unscrupulous trustee who dictates as a condition of the bankruptcy the payment to the trustee of three hundred or more dollars before the trustee will undertake to act. These fees which are paid in advance may very well be obtained from an unsuspecting creditor and, in light of the duties performed by the trustee, be excessive.

Amend Section 160 (h) to read:

- (h) Being a trustee:
- (i) Makes any arrangement under any circumstances with the bankrupt or with any solicitor, auctioneer or other person employed in connection with a bankruptcy, for any gift, remuneration or pecuniary or other consideration or benefit whatever beyond the remuneration payable out of the estate, or
 - (ii) Accepts any such consideration or benefit as described in (i) aforesaid, or
 - (iii) Accepts or receives, directly or indirectly, from any source whatsoever, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration payable out of the estate, or

(iv) Makes any arrangement for giving up, or gives up, any part of his remuneration, either as a receiver or trustee, to the bankrupt or any solicitor, auctioneer or other person employed in connection with the bankruptcy.

(i) In the case of a trustee which is a corporation or a partnership the prohibition in (h) above shall apply to each officer and director of such corporation and to each member of such partnership."

7. In addition to the point referred to in paragraph 6 hereof, it is submitted that the trustee in his application for discharge and in his report to the court should be obliged to file a statutory declaration to the effect that he has complied with the Act.

Amend Section 19 by adding thereto a further subsection to be numbered (12)

(12) Upon applying for discharge a Trustee shall file with the Court a statutory declaration that he has complied in all respects with, and has not done or been privy to any act in breach of, this Act.

8. It is also recommended that in the event a trustee commits an offence under this Act his licence should be automatically and irrevocably cancelled.

Amend Section 160 by adding a further subsection to be numbered (4)

(4) A person, being a trustee, found guilty of any offence under this Act or under the Criminal Code shall have his licence as trustee suspended and such licence shall not be renewed.

If I may interject here, and depart from the written brief, we have recommended one change to the section of the bill dealing with summary administration. It merely provides that all notices should be sent by registered mail. In effect, this places summary administration under the new amendment in exactly the same position for all practical purposes as ordinary bankruptcies. Therefore, in order to have a united submission, may we adopt the recommendations of the two boards of trade and the Bar Association and recommend that the summary administration provisions be deleted in their entirety.

9. The experience of members of the Association in the past has been that some trustees in summary administration proceedings do not attempt to mail the notices, statements and other documents referred to in paragraph (d) of Section 114 to all of the creditors of the bankrupt. The difference in cost between sending these notices, statements, etc. by registered mail rather than ordinary mail is minimal and by so doing the creditors are assured of receiving notice of the bankruptcy and the first meeting of creditors.

Amend Section 114 (d) by deleting "ordinary" and substituting "registered" so that the paragraph will read:

(d) All notices, statements and other documents shall be sent by registered mail; and

PART X

ORDERLY PAYMENT OF DEBTS

10. The concept of reviewable transactions and the creation of a class of related persons is salutary and should, it is respectfully submitted, be incorporated in the orderly payment of debts provision of the Act subject to the qualifications hereinbefore referred to. This could be done by providing that the clerk in reviewing the affidavit to be filed by the debtor in accordance with Section 175 (2) will determine which of the disclosed creditors are related persons and subject to the Clerk of the Court, as the case may be, being satisfied that the debt to the related person is *bona fide*, such related creditor should not be entitled to receive any payment under the consolidation order until all other registered creditors have been paid in full.

The procedures recommended for sections 183 and 191 are cancelled through that basic recommendation.

Amend Section 175 (2) (a) to read

- (a) The names and addresses of his creditors and the amount he owes to each creditor and, if any of them are related to him as related persons within the meaning of this Act, the relationship;

Amend Section 183 (1) to read

- 183 (1) The Court may, upon application, review
- (i) a consolidation order of the Clerk, or
 - (ii) a decision of the Clerk as to a creditor being or not being a related person within the meaning of Section 2B, or
 - (iii) a decision of the Clerk as to whether the claim of a creditor, being a related person is or is not *bona fide*, or did or did not result from a transaction at arms length.

Such application may be made by any person affected thereby by notice of motion within fourteen days of the making of the order or decision to be reviewed. The Court may upon such application confirm, vary or set aside such order or decision and make such disposition of the matter as the Court sees fit.

Amend Section 191 (2) to read:

- (2) Subject to subsection (3) the clerk shall distribute the money pro rata, or as nearly so as is practicable, among the registered creditors; and to add a further subsection to be numbered "(4)"
- (4) Unless the claim of any registered creditor who is related to the debtor as a related person within the meaning of Section 2B is found by the Clerk of the Court, as the case may be, to be *bona fide* and to have resulted from a transaction at arms length, as to proof of which facts the onus shall be upon such registered creditor, no distribution shall be made to such registered creditor until all other registered creditors shall have received payment in full.

11. Section 175 provides that with the filing of an application by a debtor the debtor shall also file an affidavit setting forth the information referred to in clauses (a) to (g) of subsection (2) of that Section. The protection afforded by Part X of The Bankruptcy Act is a privilege which is made available to a debtor and should not be granted when there is any question of the debtor not coming to the court for relief "with clean hands". It is therefore recommended that any creditor should have the right to cross-examine the debtor under oath on his affidavit and in the event that the facts set forth in the affidavit establish that the debtor is capable of paying his current obligations generally as they become due, or in the event that there is a materially false statement in the affidavit, no order should issue.

Add a new section to be numbered 178A

- 178A. Any creditor shall be entitled to cross-examine the debtor upon his affidavit filed pursuant to Section 175. Such cross-examination shall ordinarily be had at the hearing. If the debtor does not appear at the hearing such cross-examination may be had upon appointment according to the usual practice of the Court. If, upon such cross-examination or otherwise it should appear that the debtor is capable of meeting his obligations generally as they become due, or that any fact alleged in the affidavit is false in any material respect, no consolidation order shall be issued.

12. It is noted that subsection (4) of section 176 provides that the register to be maintained by the clerk pursuant to this section shall be separate from all other books and records kept by the clerk and shall be available to the public for inspection free of charge. It is recommended that an amendment to this section be added to provide that all payments received by the clerk from a debtor who has obtained a consolidation order pursuant to Part X must be recorded in the register forthwith after the receipt thereof so any registered creditor will be able to determine from time to time whether there has been a default under the consolidation order by the debtor for the purpose of section 189 (1) (a). Without this information being available on a current basis a registered creditor might be prejudiced.

Amend section 176 to add a new subparagraph to be numbered (5)

- (5) The Clerk shall enter in the register referred to in this Section, forthwith upon receipt thereof, particulars of all payments received from or on behalf of the debtor together with the dates upon which the same were received.

13. The majority of debtors who will be having recourse to the provisions of Part X of the bill will be wage earners, and therefore we believe it desirable to stipulate in section 176 that any order recommended by the clerk will provide for regular equal payments except where remuneration received by the debtor is on a seasonal or irregular basis.

14. The history of provincial legislation comparable to Part X indicates that the primary purpose is the consolidation of debts so the debtor may make one payment to an authorized individual who will disburse the amount of such payment pro rata to the registered creditors. Under the Ontario (The Division Courts Act) and Quebec (the Lacombe provisions of the Code of Civil Procedure) legislation no order can issue unless there is a minimum contribution stipulated therein. We therefore recommend that any consolidation order issued under Part X must provide that the payments to be made by the debtor will be at least equal to the seizable portion of his remuneration provided by provincial law or ten per cent of such remuneration, whichever is the greater. In the event that the clerk or the court is satisfied that something in excess of these minimums can be paid then, of course, the greater amount will be ordered it is recommended that section 184 be amended to ensure that any of the proceeds realized thereunder will be distributed to the registered creditors.

I am sorry that comment is out of place in that it relates to the authority of the clerk or the authority of the court to decide any matter brought before it, and to impose such terms on the debtor in the event that a sale of his property is ordered. It should be certain that the proceeds of that sale, regardless of the subsequent bankruptcy, are distributed to his creditors, in the same way as any wages accruing to a clerk during this period are also distributed to his creditors.

Add to section 181 a new subsection to be numbered (2) causing the present subsection (2) to be renumbered (3):

- (2) In the case of a debtor who is a wage earner a consolidation order shall provide:
 - (a) that payments be in equal, periodic, consecutive instalments, except in the case of a wage earner employed upon a seasonal or irregular basis;
 - (b) that the amount of such payments shall be the greater of:
 - (i) ten per cent of the remuneration of the debtor, or
 - (ii) the percentage of such remuneration which, by provincial law in the province where the debtor resides, is subject to garnishee or other attachment proceedings, or

- (iii) such percentage as the Clerk or the Court, as the case may be, shall determine having regard for the financial capacity of the debtor."

Amend section 184 to read

184. The Court may, in deciding any matter brought before it, impose such terms on a debtor with respect to the custody of his property or any disposition thereof or of the proceeds thereof as it deems proper to protect the registered creditors and may give such directions for that purpose as the circumstances require. The proceeds of any such disposition shall be distributed to the registered creditors in accordance with the other provisions of this Part.

15. We respectfully submit that the additional debts that may be incurred by a debtor after the consolidation order pursuant to clause (c) of section 189 (1) should be limited to two hundred dollars as originally set forth in Bill S-2 of the Twenty-Fifth Parliament. In addition, we question the need for clause (d) of the subsection in light of the wording of clause (b), in that no judgment could be recovered against the debtor without the same being a proceeding for the recovery of money within the meaning of clause (b). The purpose of these two clauses may well have to be reviewed before the final wording of the amendment is decided upon.

Clause (b) automatically gives the creditor the right to apply by notice of motion to the court where any other proceeding for the recovery of money is brought against the debtor, and clause (d) relates to judgments. I have not been able to reconcile the wording in these two clauses.

Amend section 189 (1) (c) to read

- (c) The debtor has, after the consolidation order was made, incurred further debts totalling in excess of two hundred dollars;

16. A common abuse exists in bankruptcies of individuals with debts of over one thousand dollars whose assets, as that term is ordinarily used in this context, are not sufficient to enable payment of all obligations, when in many cases the individual could, by employing reasonable budgeting practices and establishing an orderly payment schedule, meet those obligations within a two or three year period. It is the respectful submission of the association that where the main asset of an individual is his earning power and where his employment seems reasonably well assured this asset should be taken into account and an individual should not be allowed to avoid paying his debts by making a voluntary assignment under the act if, by employing the procedures of Part X, he would be able to live reasonably and see to the payment of his debts over a reasonable period of time without the stigma of a bankruptcy. This procedure, in the opinion of the association, would be beneficial to both debtor and creditors.

Amend to add a new section to be numbered 22A

- 22A. No debtor residing in a province which has had this Part proclaimed in force, whose principal income consists of wages, salary or other similar remuneration, shall have a receiving order issued against him or shall make an assignment in bankruptcy, if with the consent of his creditors, other than creditors who are related persons within the meaning of Section 2B, and having regard to all of the circumstances, by applying for and obtaining a consolidation order under this Part, such debtor ought reasonably to be able to pay in full within a period of three years all of his debts other than debts to related persons within the meaning of Section 2B.

The CHAIRMAN: You are still of the view that Part X has some useful purpose?

Mr. STEVENS: Yes, very much so.

The CHAIRMAN: Is that your submission?

Mr. STEVENS: Yes.

The CHAIRMAN: Any questions for Mr. Stevens?

I think this would be a good time to adjourn and I suggest that we resume at two o'clock and get some answers from Mr. Tassé. Is the committee agreeable to that?

The committee adjourned until 2 p.m.

—Upon resuming at 2.15 p.m.

The CHAIRMAN: We have a quorum, so I call the meeting to order. Would you come forward, Mr. Tassé? We heard certain representations this morning, and as there are no further representations to be made at this time it is my thought that we might deal with the bill clause by clause. We can look at the points raised in the discussion this morning in relation to the clause of the bill we are dealing with.

Senator FLYNN: Are you sure, Mr. Chairman, that this is the best procedure? I was thinking that it would be a good thing if the Superintendent and the Department of Justice had a chance of looking at the report of this morning's sitting, and then giving us their considered opinion on the suggestions that have been made. It seems to me that they are not all that simple that we can make a judgment upon them right away.

The CHAIRMAN: Of course, if we cannot make a judgment right away then we will let that particular clause stand, but I think we can do some elimination. The representations were not made in relation to all the clauses of the bill.

Senator FLYNN: I know, but they may affect a particular clause even though they were not directly related to it.

The CHAIRMAN: If that occurs at any stage to any person then we will let that particular clause stand. It may be a matter of a day or longer before the transcript is available. Of course, it depends upon whether there is some urgency in respect to this bill. However, it appears to me in connection with clause 1, which deals with reviewable transactions and related persons, that there was one suggestion made in the brief presented by the Credit Granters' Association that seemed to have some value, namely, the enlargement of the blood relationship category.

What have you to say about that, Mr. Tassé? I am referring to the bottom of page 2 and the top of page 3 of their brief.

Mr. TASSÉ: In other words, they have recommended that we add to the definition, uncles, aunts, cousins, nephews and nieces of the other?

The CHAIRMAN: Yes.

Mr. TASSÉ: I think that this is acceptable. On the other hand, I might say, since I have the floor, that there was a very large number of submissions made this morning, and although some of them may be dealt with quite easily there are others which will require very careful consideration and attention and further study. This, I think, will take some time. I say this in all fairness to those who have taken the time and trouble of preparing the suggestions, and also in fairness to the one who is speaking to you now and who wants to give a well-advised opinion.

The CHAIRMAN: I invite discussion from the committee on the question of whether we should delay further consideration of this bill until the transcript of what was said this morning is available to each member, and also to the Superintendent and the Department of Justice, so that they may weigh the suggestions and consider to what extent, if at all, changes should be made.

Senator BEAUBIEN (*Bedford*): I think that that would be very sensible, Mr. Chairman.

Senator KINLEY: Yes, because this is an important bill.

The CHAIRMAN: Especially so now, when the Superintendent has pointed out that some of these proposed amendments are not as easy as others to assimilate at once. The moment that is said I think our course has to be one of delaying the matter.

Senator PEARSON: Mr. Chairman, do I understand that all representations have now been made to the committee?

Senator BURCHILL: Are there no further representations to be made?

The CHAIRMAN: There are no others.

Senator KINLEY: You mentioned the question of blood relationship a moment ago, and dealings not at arm's length.

The CHAIRMAN: Yes.

Senator KINLEY: I think that this is going too far. There would be nobody left in a small community. Everybody is related in a small town.

The CHAIRMAN: Then that would make it very simple, if everybody in the town was a blood relation of everybody else, and everybody in the town was a creditor of another person who was a debtor—

Senator KINLEY: Yes, they would not have to pay anybody. If you want to do something and you need money you have to go to your friends to get it, and it is always the same people in a small town who have money.

The CHAIRMAN: We have not made a final decision on the matter. It is the first clause of the bill, and we would normally start with the first clause. However, having regard to what Mr. Tassé has said I think the fairest course, and the proper course, would be to delay consideration of this bill until the transcript is available. Mr. Tassé can then weigh the representations and consult with his chief, and we shall have an opportunity of digesting them also. I think it will be better in the long run if we do that. Is it agreed?

Senator Beaubien (*Bedford*): Agreed.

Senator LEONARD: Has the Superintendent anything further to say at this time after hearing the representations made this morning?

Mr. TASSÉ: I would prefer to wait and give further consideration to these representations. I am sure I shall have something to add to what was said this morning.

Senator FLYNN: The department has received representations directly from the Superior Court Judges of the Province of Quebec. Have you seen those?

Mr. TASSÉ: I am aware that the Conference of Judges that met in early March have made representations to the department.

Senator FLYNN: You have not had the occasion to study them yet?

Mr. TASSÉ: They are under study.

The CHAIRMAN: Then, I will adjourn further consideration of this bill. Another meeting of this committee is called for tomorrow morning at 9.30, at which time we will consider the bill to incorporate the Bank of British Columbia. The promoters and the first provisional directors of that bank will be present to tell us why they should be granted a charter.

Senator KINLEY: What about the bill to extend the provisions of the Bank Act?

The CHAIRMAN: That has not yet been sent to the committee. The committee is adjourned until tomorrow morning at 9.30.

The committee adjourned.



First Session—Twenty-seventh Parliament

1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 4.

Complete Proceedings on the Bill S-16,
intituled: "An Act to incorporate Bank of British Columbia"

THURSDAY, MARCH 24th, 1966

WITNESSES:

W. G. Burke-Robertson, Q.C., Counsel.

Einar M. Gunderson, provisional director.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Hugessen	Reid
Blois	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Kinley	Taylor
Cook	Lang	Thorvaldson
Crerar	Leonard	Vaillancourt
Croll	Macdonald (<i>Cape Breton</i>)	Vien
Davis	Macdonald (<i>Brantford</i>)	Walker
Dessureault	McCutcheon	White
Farris	McKeen	Willis—(49)
Fergusson	McLean	
Flynn	Molson	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, February 9th, 1966:

"Pursuant to the Order of the Day, the Honourable Senator Farris moved, seconded by the Honourable Senator Isnor, that the Bill S-16, intituled: "An Act to incorporate Bank of British Columbia", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Farris moved, seconded by the Honourable Senator Isnor, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, March 24th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Beaubien (*Bedford*), Beaubien (*Provencher*), Benidickson, Blois, Brooks, Burchill, Croll, Croll, Farris, Fergusson, Flynn, Gélinas, Gouin, Haig, Hugessen, Irvine, Kinley, Leonard, Macdonald (*Cape Breton*), Pearson, Pouliot, Power, Roebuck, Smith (*Queens-Shelburne*), Taylor and Walker. (28)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Leonard it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-16.

Bill S-16, "An Act to incorporate Bank of British Columbia", was read and examined.

The following witnesses were heard:

W. G. Burke-Robertson, Q.C., Counsel.

Einar M. Gunderson, provisional director.

On Motion of the Honourable Senator Croll it was Resolved to report the said Bill as amended, which amendments appear in the Report of the Committee printed as part of the proceedings of this day.

At 12 Noon the Committee adjourned until 2.00 p.m. this day.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, 23rd March, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-16, intituled: "An Act to incorporate Bank of British Columbia", has in obedience to the order of reference of February 9th, 1966, examined the said Bill and now reports the same with the following amendments:

1. *Page 2*: Immediately after clause 5, insert as new clauses 6, 7, 8, 9, 10 and 11, the following:

6. (1) In this section and sections 7 to 10

(a) "agent", in relation to

(i) Her Majesty in right of Canada or in right of a province, or

(ii) the government of a foreign state or any political subdivision thereof,

means an individual or corporation empowered to perform any function or duty on behalf of Her Majesty in either such right or on behalf of the government of a foreign state or any political subdivision thereof, other than a function or duty in the administration or management of the estate or property of an individual;

(b) "corporation" includes an association, partnership or other organization;

(c) "non-resident" means

(i) an individual who is not ordinarily resident in Canada,

(ii) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,

(iii) the government of a foreign state or any political subdivision thereof, or an agent of either,

(iv) a corporation that is controlled directly or indirectly by non-residents as defined in any of subparagraphs (i) to (iii),

(v) a trust

(A) established by a non-resident as defined in any of subparagraphs (ii) to (iv) other than a trust for the administration of a pension fund for the benefit of individuals a majority of whom are residents, or

(B) in which non-residents as defined in any of subparagraphs (i) to (iv) have more than fifty per cent of the beneficial interest, or

(vi) a corporation that is controlled directly or indirectly by a trust defined in subparagraph (v) as a non-resident; and

(d) "resident" means an individual, corporation or trust that is not a non-resident.

(2) For the purposes of sections 7 to 10 a shareholder is deemed to be associated with another shareholder if

(a) one shareholder is a corporation of which the other shareholder is an officer or director;

(b) one shareholder is a partnership of which the other shareholder is a partner;

- (c) one shareholder is a corporation that is controlled directly or indirectly by the other shareholder;
- (d) both shareholders are corporations and one shareholder is controlled directly or indirectly by the same individual or corporation that controls the other shareholder;
- (e) both shareholders are members of a voting trust where the trust relates to shares of the Bank; or
- (f) both shareholders are associated within the meaning of paragraphs (a) to (e) with the same shareholder.

(3) For the purposes of this section and sections 7 to 10 a "shareholder" is a person who according to the books of the Bank is the holder of one or more shares of the capital stock of the Bank and a reference in sections 7 to 10 to a share being held by or in the name of any person is a reference to his being the holder of the share according to the books of the Bank.

(4) For the purposes of sections 7 to 10 where a share of the capital stock of the Bank is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident.

(5) Where a corporation or trust that was at any time a resident becomes a non-resident, any shares of the capital stock of the Bank acquired by the corporation or the trust while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 7 and 8, to be shares held by a resident for the use or benefit of a non-resident.

7. (1) The Bank shall refuse to allow a transfer of a share of the capital stock of the bank to a non-resident to be made or recorded in a register of transfers of the Bank

- (a) if, when the total number of shares of the capital stock of the bank held by non-residents exceeds ten per cent of the total number of the issued and outstanding shares of such stock, the transfer would increase the percentage of such shares held by non-residents; or
- (b) if, when the total number of shares of the capital stock of the bank held by non-residents is ten per cent or less of the total number of the issued and outstanding shares of such stock, the transfer would cause the total number of such shares held by non-residents to exceed ten per cent of the total number of the issued and outstanding shares of such stock.

(2) The Bank shall refuse to allow a transfer of a share of the capital stock of the bank to any person to be made or recorded in a register of transfers of the bank

- (a) if, when the total number of shares of the capital stock of the Bank held by such person and by other shareholders associated with him, if any, exceeds ten per cent of the total number of the issued and outstanding shares of such stock, the transfer would increase the percentage of such shares held by such person and by other shareholders associated with him, if any; or
- (b) if, when the total number of shares of the capital stock of the Bank held by such person and by other shareholders associated with him, if any, is ten per cent or less of the total number of the issued and outstanding shares of such stock, the transfer would cause the total number of such shares held by such person and by other

shareholders associated with him, if any, to exceed ten per cent of the issued and outstanding shares of such stock.

(3) The Bank shall refuse to allow a transfer of a share of the capital stock of the Bank to

- (a) Her Majesty in right of Canada or in right of a province or an agent of Her Majesty in either such right, or
- (b) the government of a foreign state or any political subdivision thereof or an agent of the government of a foreign state or any political subdivision thereof,

to be made or recorded in a register of transfers of the Bank.

(4) The Bank shall not accept a subscription for a share of the capital stock of the Bank

- (a) by Her Majesty in right of Canada or in right of a province or an agent of Her Majesty in either such right or by the government of a foreign state or any political subdivision thereof or an agent of the government of a foreign state or any political subdivision thereof, or
- (b) if the subscription is accompanied by a declaration by the subscriber where if the subscription were a transfer of the share the Bank would be required under subsection (1) or (2) to refuse to allow the transfer to be made or recorded; but in the case of a subscription pursuant to an offer under section 36 of the *Bank Act* the bank may count as shares issued and outstanding all the shares included in the offer.

(5) Subject to paragraph (a) of subsection (4), where an offer of shares of the capital stock of the Bank is made under section 36 of the *Bank Act*, the bank may accept any subscription

- (a) if the terms of the offer contain provisions to the effect that in the case of a share offered to a shareholder whose recorded address, at the time fixed for determining the shareholders to whom the offer is made, is a place within Canada and who is not at that time, to the knowledge of the bank, non-resident, a subscription will not be accepted if the share is to be recorded in the name of a non-resident;
- (b) if the subscription is accompanied by a declaration by the subscriber
 - (i) as to whether the person in whose name the share is to be recorded is a resident or a non-resident, and
 - (ii) to the effect that the total number of shares of the capital stock of the Bank that will, if the subscription is accepted, be held by such person and by other shareholders associated with him, if any, will not exceed ten per cent of the total number of the shares of the capital stock of the Bank that will be issued and outstanding on the issue of all shares included in the offer; and
- (c) if, on the basis of such declaration, the acceptance of the subscription is not contrary to the terms of the offer.

(6) Default in complying with the provisions of this section does not affect the validity of a transfer of a share of the capital stock of the Bank that has been made or recorded in a register of transfers of the Bank or the validity of the acceptance of a subscription for a share of the capital stock of the Bank.

8. (1) Notwithstanding section 34 of the *Bank Act*, where a resident holds shares of the capital stock of the Bank in the right of, or for the use or benefit of, a non-resident, the resident shall not, in person or by proxy, exercise the voting rights pertaining to those shares.

- (2) Notwithstanding section 34 of the *Bank Act*, where the total of
- (a) the number of shares of the capital stock of the Bank held in the name or right of or for the use or benefit of a person, and
 - (b) the number of shares of the capital stock of the Bank held in the name or right of or for the use or benefit of
 - (i) any shareholders associated with the person mentioned in paragraph (a), or
 - (ii) any other person who would be deemed under subsection (2) of section 6 to be associated with the person mentioned in paragraph (a), if both he and such other person were shareholders,
 exceeds ten per cent of the issued and outstanding shares of such stock,
 - (c) no person shall, in person or by proxy, exercise the voting rights pertaining to any of the shares referred to in paragraph (a) that are held in the name of a resident, and
 - (d) no person shall, in person or as proxy, exercise the voting rights pertaining to any of the shares referred to in paragraph (a) that are held in the name of a non-resident.

(3) Notwithstanding section 34 of the *Bank Act*, the voting rights pertaining to any shares of the capital stock of the Bank shall not be exercised when the shares are held in the name or right of or for the use or benefit of

- (a) Her Majesty in right of Canada or in right of a province or an agent of Her Majesty in either such right; or
- (b) the government of a foreign state or any political subdivision thereof or an agent of the government of a foreign state or any political subdivision thereof.

(4) Where it appears from the register of shareholders of the Bank that the total par value of the shares of the capital stock of the Bank held by a shareholder is less than five thousand dollars, a person acting as proxy for the shareholder at a general meeting of the Bank is entitled to assume that the shareholder holds the shares in his own right and for his own use and benefit and that he is not associated with any other shareholder, unless the knowledge of the person acting as proxy is to the contrary.

(5) if any provision of this section is contravened at a general meeting of the shareholders of the Bank, no proceeding, matter or thing at that meeting is void by reason only of such contravention, but any such proceeding, matter or thing is, at any time within nine months from the day of commencement of the general meeting at which the contravention occurred, voidable at the option of the shareholders by a resolution passed at a special general meeting of the shareholders.

9. (1) The directors may make such by-laws as they deem necessary to carry out the intent of sections 6 to 10 and in particular, but without restricting the generality of the foregoing, the directors may make by-laws

- (a) requiring any person in whose name a share of the capital stock of the Bank is held to submit a declaration
 - (i) with respect to the ownership of such share,
 - (ii) with respect to the place in which the shareholder and any person in whose right or for whose use or benefit the share is held are ordinarily resident,
 - (iii) whether the shareholder is associated with any other shareholder, and

- (iv) with respect to such other matters as the directors may deem relevant for the purposes of sections 6 to 10
- (b) requiring any person desiring to have a transfer of a share to him made or recorded in a register of transfers of the Bank or desiring to subscribe for a share of the capital stock of the Bank to submit such a declaration as may be required pursuant to this section in the case of a shareholder; and
- (c) providing for the determination of the circumstances in which any declarations shall be required, their form and the times at which they are to be submitted.

(2) Where pursuant to any by-law made under subsection (1) any declaration is required to be submitted by any shareholder or person in respect of the transfer of or subscription for any share, the Bank may refuse to allow such transfer to be made or recorded in a register of transfers of the Bank or to accept such subscription without the submission of the required declaration.

(3) The Bank and any person who is a director, officer, employee or agent of the Bank, may rely upon any information contained in a declaration required by the Bank pursuant to this section or any information otherwise acquired in respect of any matter that might be the subject of such a declaration; and no action lies against the Bank or any such person for anything done or omitted in good faith in reliance upon any such information.

(4) Where for any of the purposes of section 7, the Bank requires to establish the total number of shares of the capital stock of the Bank held by non-residents, the Bank may calculate the total number of such shares held by non-residents to be the total of

- (a) the number of shares held by all shareholders whose recorded addresses are places outside Canada; and
- (b) the number of shares held by all shareholders each of whose aggregate individual holdings of such shares has a par value of five thousand dollars or more and whose recorded addresses are places within Canada but who to the knowledge of the Bank are non-residents;

and such calculation may be made as of a date not earlier than four months before the day on which the calculation is made.

(5) Where by any calculation made under subsection (4) the total number of shares held by non-residents is under ten per cent of the total issued and outstanding shares of the capital stock of the Bank, the number of shares the transfer of which by residents to non-residents the Bank may allow to be made or recorded in the registers of transfers of the Bank shall be so limited as not to increase the total number of shares held by non-residents to more than ten per cent of the total issued and outstanding shares of the capital stock of the Bank.

(6) Notwithstanding subsections (1) and (2) of section 7 where in the case of a transfer of any shares of the capital stock of the Bank to a transferee it appears that

- (a) the aggregate par value of all shares of the capital stock of the Bank held by the transferee as shown by the register of shareholders of the Bank at a date not more than four months earlier is less than five thousand dollars, and
- (b) the aggregate par value of the shares included in the transfer and any shares acquired by the transferee after the date mentioned in

paragraph (a) and still held by him as shown by the register of transfers of the Bank in which it is sought to have the transfer made or recorded is less than five thousand dollars, the Bank is entitled to assume that the transferee is not and will not be associated with any other shareholder and, unless the address to be recorded in the register of shareholders of the Bank for the transferee is a place outside Canada, that he is a resident.

10. (1) Notwithstanding section 7 the Bank, upon its incorporation and with the prior approval of the Treasury Board, may, either before or after the first general meeting of the shareholders of the Bank, accept subscriptions for shares by residents without regard to the provisions of section 7 but no such subscriptions for shares may be accepted by the Bank except in accordance with and subject to such terms and conditions as the Treasury Board may by order prescribe.

(2) Notwithstanding subsection (2) of section 8, the voting rights pertaining to any shares of the capital stock of the Bank acquired through the acceptance of a subscription pursuant to subsection (1) of this section and held in the name of and for the use or benefit of a resident may be exercised by or on behalf of the holder thereof in accordance with and subject to such terms and conditions as the Treasury Board may by order prescribe.

11. Sections 6 to 10 inclusive of this Act shall have effect notwithstanding anything in the *Bank Act* but unless otherwise provided by Parliament shall cease to have effect upon the last day upon which the Bank may carry on the business of banking under the provisions of section of the Act.

2. Renumber original clauses 6 and 7 as clauses 12 and 13 respectively.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, March 24, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill S-16, to incorporate the Bank of British Columbia, met this day at 11 a.m. to give consideration to the bill.

Senator **SALTER A. HAYDEN** in the Chair.

The **CHAIRMAN**: Honourable senators, I call the meeting to order. We have before us for consideration Bill S-16, to incorporate the Bank of British Columbia. I think the committee might agree at this time to a motion to print 800 copies in English and 300 copies in French of our proceedings.

The Committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The Committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The **CHAIRMAN**: We are now ready for business. Those appearing with respect to this bill are Senator Farris as the sponsor, and Mr. Burke-Robertson, Q.C., as counsel. Four of the provisional directors are present, namely, Mr. Harold B. Elworthy, Mr. William C. Mearns, Mr. Frederick H. Dietrich and Mr. Einar M. Gunderson.

Senator Farris, is Mr. Gunderson going to speak in support of this bill?

Senator **FARRIS**: Yes. May I say at this stage, Mr. Chairman, that we have prepared copies—

The **CHAIRMAN**: Yes, they have been distributed.

Senator **FARRIS**: I am referring to copies of the proposed amendments to the bill. Has everybody a copy of those?

Senator **ROEBUCK**: I have not seen it yet.

Senator **FARRIS**: I am told that these amendments were drafted by the Government as part of the proposed bill to amend the Bank Act in 1965. That bill, of course, was never passed because of dissolution.

Senator **WALKER**: What section of the bill to incorporate the Bank of Western Canada are you referring to, senator?

Senator **FARRIS**: That has been discussed in the House of Commons. There are two situations now existing that did not exist before. One is that the bill to incorporate the Laurentide Bank has been withdrawn, so that this bill is with respect to the only proposed new bank in British Columbia. The second thing is that the House of Commons, in connection with the bill to incorporate the Bank of Western Canada, have incorporated these provisions in it, and we propose to submit these provisions for adoption as an amendment to the bill before the committee now. The reason we are doing that is that it is certain the House of Commons will not pass this bill to incorporate the Bank of British Columbia if it does not contain the same provisions as the bill to incorporate the Bank of

Western Canada. That was all they needed, that those amendments be incorporated into our bill. Therefore, as they were accepted by the Government in 1965, and have been, as far as I know, adopted by the Commons, we should put them in, and everybody will receive a copy.

May I say that as far as counsel acting for these applicants is concerned, he is unavoidably absent. He is dealing with another matter in the Supreme Court of Canada. However, I am a lawyer of some experience, and I think I can fulfill those duties. The first witness will be Mr. Gunderson.

Einar M. Gunderson: Mr. Chairman, I would like to express our appreciation of your hearing us at this time. We have come a long way, and we are glad you arranged that we could be heard.

The CHAIRMAN: And perhaps you will realize that I am not quite so bad as Senator Farris thought I might be.

Senator FARRIS: Well, I am a lawyer, and so are you.

Mr. GUNDERSON: I would like to start with the proposal on page 9 of the brief, which I shall read.

Mr. Chairman, honourable senators, I appreciate the opportunity to appear before the committee as spokesman on behalf of the provisional directors of the proposed Bank of British Columbia. I am pleased to say that all of the provisional directors are present here today and I would like now to introduce them to you:—Frederick H. Dietrich of Vancouver, President, Dietrich-Collins Equipment Limited; Harold B. Elworthy of Victoria, Chairman of the Board, Island Tug & Barge Limited; William C. Mearns of Vancouver, Executive Director, B.C. Hydro and Power Authority.

I am sorry that Mr. John A. G. Wallace, of Victoria, General Manager of the Yarrow's Shipyards Limited, whose name is added in the brief, could not be present.

A complete biographical sketch and list of qualifications of each of the provisional directors is contained in Part II of this brief.

The members of the committee will recall that we came before you on a previous occasion to seek the committee's approval to a bill to incorporate a chartered bank of national significance with head office in Vancouver, British Columbia, to be known as the Bank of British Columbia. The first appearance before this committee on that behalf took place on July 22nd, 1964. The committee met subsequent to that time during the balance of the year some eight times in all to give what must be considered by all to have been the most careful and exhaustive consideration to the proposed bill. In the course of this committee's hearings section by section approval was given to the bill but on the Motion of Senator Hugessen, on December 14th, 1964, the committee by a vote of nineteen to seven decided to report to the Senate that the preamble to the bill be not approved. The reason for disapproval is most significant in the light of the present application and is set out on the bottom of page 220 and the top of page 221 of the proceedings of the committee of Monday, December 14th, 1964, as follows:

That the committee do report to the Senate with respect to Bill S-20, an act to incorporate the Bank of British Columbia, as follows:

In the opinion of your committee, the preamble to this bill has not been proved, for the following reasons:

At the hearings before the committee, the Premier and other Ministers of the Government of the Province of British Columbia appeared in

support of the bill and stated that, if the bill were passed, the government of that province would subscribe for up to 10% of the shares to be issued by the bank; so far as your committee is aware, there is no precedent for the ownership by the government of a province of a substantial proportion of the shares of a chartered bank operating under the provisions of the Federal Bank Act; this could involve the effective control of a federal chartered bank by the government of a province, a situation which would raise important questions of public policy and of constitutional law; your committee is of the opinion that these are matters of general policy which should be determined by the Parliament of Canada in the forthcoming revision of the Bank Act, and that pending such determination this bill should not be proceeded with.

A reading of this motion and a recollection on the part of the members of this committee of the proceedings previously held brings into focus the fact that virtually all of the honourable senators' doubts and fears in respect of the previous application concerned the expressed intention of the government of the province to participate in the equity holdings of the bank by purchasing capital stock up to the maximum extent of 10 per cent of the capital stock subscribed.

The present application bears no such provision. Since that time the government has expressed publicly that it has reconsidered its position and has decided not to invest in the capital stock of the bank. No doubt this decision has been based in no small part on the increased support expressed on the part of the public to invest in the bank. Moreover, Senator Farris, moving second reading of the bill on February 9th, 1966, stated on Page 145 of *Hansard* as follows:—

I have also the authority to state, on behalf of the Premier of the province, that his government will undertake to hold no shares in this bank, if incorporated.

It will be recalled that on the first occasion briefs were presented by the Premier, the Attorney-General and the Minister of Education and Labour, for the Province of British Columbia. Much of what was contained therein showed substantial reasons, geographic, economic and social, why a large banking institution was needed with head office in Vancouver. At that time, I, on behalf of the other provisional directors, advised the committee that we were associated with the preparation of the briefs and adopted their contents.

I mention that now and, in fact, wish to reiterate that fact at this time. For, all of the reasons which were previously advanced in support of the need for a large banking institution tuned to the needs of Western Canada generally and British Columbia in particular, apply with equal force to-day as they did some twenty months ago, indeed, a consideration of the economic indices within the province for that short period of time and the adjusted projections for the future, bear out the fact that the reasons previously advanced apply with greater force to-day than they did that short time ago and this will be seen from a consideration of the material which follows.

Geography dictates a need for a bank in British Columbia.

Senator CROLL: Mr. Chairman, Mr. Gunderson has met head on the objection taken by this committee at that time. All he is doing now is reiterating what they told us on another occasion with greater emphasis. Since we were suitably and favourably impressed at that time, it seems to me that if we put

this on record, and meet the situation head on, in view of the fact that the witness agrees that the amendments that were made will become part and parcel of the new bill, then we shall have the matter before us.

The CHAIRMAN: Yes, senator. Along that line there is only one thing I wanted to ask Mr. Gunderson. At the last hearing we were told how important was the identification as between the proposed bank and the Government of British Columbia, and that was pointed to as indicating the assured success of the bank when it would be incorporated.

Mr. GUNDERSON: I think the Government's intention of wanting too invest in converted stock before was to make sure that a Bank of British Columbia would be formed and that its offices would be in Vancouver and also that its executive offices would be in Vancouver. They were afraid that possibly if the bank became incorporated the head offices and the executive offices could be moved to the east again. So that the new bill looks after that, and with that provision whereby the majority of the bank directors shall be resident in the province, and that the executive officers shall be resident in or have their ordinary residence in the province, it precludes being moved anywhere else.

Senator FARRIS: If I may interrupt at this stage, Mr. Chairman, I would like to ask Mr. Gunderson a question. I am proposing, with the sanction of the applicants, to amend this bill by incorporating the clause that was put in by the Commons in the Coyne bill.

The CHAIRMAN: Do you mean "clauses," plural?

Senator FARRIS: That makes it all the better.

Senator ROEBUCK: We should hear Mr. Gunderson now.

Senator FARRIS: I merely want to have him describe these amendments that were made in the Commons, and point out that it would be folly for us, if we are in agreement with those provisions, not to have them in now.

Senator ROEBUCK: Yes, I agree.

Senator FARRIS: Because if this bill goes to the Commons without them in, the Commons is bound to put in here and there what they did in their committee with respect to the Bank of Western Canada.

Senator ROEBUCK: We are all agreed on that.

Senator FARRIS: I would like the chairman to ask Mr. Gunderson how much he knows about those clauses.

The CHAIRMAN: I take it Mr. Gunderson will tell us in his own way.

Senator LEONARD: This is an excellent brief and I think it should be printed in the records in toto. We can all agree with the statistics and factual information in it. I wonder whether Mr. Gunderson would give us the highlights or main points he wants to be sure we know about.

Senator ROEBUCK: Let him go ahead and read it.

The CHAIRMAN: He has the floor and will make his own presentation.

Senator ROEBUCK: I think he ought to be allowed to go ahead.

Mr. GUNDERSON: I shall continue reading the brief:

Geography dictates a need for a bank in British Columbia. British Columbia ranks third amongst the provinces in size and is greater in land area, excluding lakes, than Ontario. It is one-sixth larger than the combined area of the United Kingdom and France and is larger in area than the States of Washington, Oregon and California put together.

In terms of proximity to existing banking institutions four of the head offices of the existing chartered banks are located in the present financial capitals of Canada of Toronto and Montreal, some two-thirds of the continent away. The fifth chartered bank with nation-wide branches has its head office in Halifax which is closer to London, England, or Paris, France, than Vancouver.

The significance of geography in this context is that in spite of rapid communication and transportation there is a great gulf fixed between the existing financial centres in the East and the financial needs and economic aspirations of the Pacific Region. All men are conditioned by the environment of the region in which they operate, in a nation where each economic region is an empire in itself seeking adequate credit to achieve maximum economic growth.

It is an economic reality long recognized by many, including the Dominion Bureau of Statistics, that Canada is comprised of a nation basically of five distinct business regions, the Atlantic, Quebec, Ontario, Prairie and British Columbia areas. And yet the latter does not have the benefit of a banking institution based within its region. This, in spite of the fact that stronger economic reasons support a head office of a large chartered bank being in Vancouver than in Halifax, Nova Scotia. This is borne out by Table I, which compares the population and business activity of the four Atlantic provinces combined with the Province of British Columbia. Note that British Columbia with a smaller population stands substantially higher in all other respects.

TABLE 1.—POPULATION AND BUSINESS ACTIVITY IN THE ATLANTIC PROVINCES (NOVA SCOTIA, NEW BRUNSWICK, NEWFOUNDLAND, AND PRINCE EDWARD ISLAND) AND BRITISH COLUMBIA.

Item	1963			Latest		
	Four Atlantic Provinces	British Columbia	Per Cent British Columbia Greater (Less) than Atlantic Provinces	Four Atlantic Provinces	British Columbia	Per Cent British Columbia Greater (Less) than Atlantic Provinces
Population, (000).....	1,958	1,695	(-13.4)	1,990	1,789	(-11.2)
Labour force (000).....	601	616	2.5	611	667	9.2
Labour income (\$ millions).....	1,445	2,248	55.6	1,557	2,460	58.0
Capital investment (\$ millions).....	957	1,382	44.4	1,165	1,876	61.0
Factory shipments (\$ millions).....	1,052	2,463	134.1	996	2,404	141.4
Retail sales (\$ millions).....	1,560	1,898	21.0	1,618	2,058	27.2
Cheques cashed (\$ millions).....	7,406	25,070	238.5	8,726	30,190	246.0

SOURCE: Dominion Bureau of Statistics.

To emphasize the high level of economic activity and growth in the Pacific region and to graphically indicate the increase that has taken place even within the short period of twenty months from the date we first appeared before this committee one can do no better than set out a portion of one of the briefs presented at that time, but inserting therein the present percentages and figures and thereby show the substantial increase that has occurred in many sectors within that short space of time.

Let us look at some comparisons as given in Table 2. In the 12 years from 1952 to 1963 British Columbia increased its share of national population from 8.3 to 9 per cent (now 9.1) of labour force from 8.4 to 9.1 per cent, (now 9.3) of personal income from 9.9 to 10.1 per cent, (now 10.4) of factory shipments from 7.8 to 8.5 per cent, (now 8.6) and of foreign exports from 11.3 to 15.6 per cent, (now 13.2). British

Columbia retained between 1952 and 1963 its 11-per-cent-share of national capital investment, (now 15.8) and 10.2 per cent of retail sales, (now 10.6)—both well above its shares of national population. For all these growth factors, the relative progress of British Columbia in 1963 exceeded that of the rest of Canada.

TABLE 2.—GROWTH IN BUSINESS ACTIVITY OF BRITISH COLUMBIA AND CANADA, 1952 TO 1963

	1952		1963		Percentage Growth 1952/63		Percentage Growth 1962/63	
	Per Cent of Canada		Per Cent of Canada					
	B.C.		B.C.		B.C.	Rest of Canada	B.C.	Rest of Canada
Population, June 1 (000).....	1,205	8.3	1,695	9.0	41	30	2.2	1.7
Labour force (000).....	447	8.4	616	9.1	38	26	2.8	1.9
Personal income (\$ millions).....	1,728	9.9	3,317	10.1	92	88	6.6	6.3
Capital Investment (\$ millions).....	811	11.1	1,332	11.0	70	73	7.3	6.6
Factory shipments (\$ millions).....	1,332	7.8	2,463	8.5	85	69	10.8	6.6
Retail sales (\$ millions).....	1,177	10.2	1,888	10.2	60	60	5.8	4.8
Foreign exports ¹ (\$ millions).....	486	11.3	1,059	15.6	118	51	13.6	9.4

	1965		% Growth 1952/65		% Growth 1964/65	
	% of Canada					
	B.C.		B.C.	Rest of Canada	B.C.	Rest of Canada
Population, June 1 (000).....	1,789	9.1	48	34	2.9	1.6
Labour force (000).....	667	9.3	49	33	4.4	2.8
Personal income (\$ millions).....	4,000	10.4	131	123	10.7	9.9
Capital Investment (\$ millions).....	1,950	15.8	140	64	12.4	13.9
Factory shipments (\$ millions).....	2,875	8.6	116	95	7.6	5.8
Retail sales (\$ millions).....	2,275	10.6	93	85	6.8	6.8
Foreign exports ¹ (\$ millions).....	1,120	13.2	130	93	No change	5.8

¹ Export of products produced in British Columbia and exported through all Canadian customs ports.

SOURCE: Dominion Bureau of Statistics and British Columbia Bureau of Economics and Statistics.

Of great importance to the Canadian economy is the increasing proportion of national foreign exchange earnings produced by exports of British Columbia products. Between 1952 and 1963, foreign shipments of British Columbia goods rose from \$486 million to \$1.06 billion, (now \$1.12) up 118 per cent (now 131%) while those of the rest of Canada increased by only 51 per cent, (now 83%). In 1963 the 9 per cent of Canadians in the Province produced 15.6 per cent, now 13.9)* of national foreign commodity exports.

It is well known that Canada is a major world exporter of goods. However, it is less well known that 1963 British Columbia merchandise exports were equivalent to 23.6 per cent (now 22.7) of its gross provincial product while the rest of the nation exported only 14.9 per cent, (now 16.5) of its gross product.

With respect to interprovincial trade, British Columbia imports of products of Ontario and Quebec have an annual value of about five times the yearly worth of British Columbia goods shipped to the central Provinces.

Thus British Columbia has basically different trade patterns than the rest of Canada and, in particular, than Ontario and Quebec, where management of our chartered banks is concentrated. The Pacific region is a greater per capita exporter of its goods to open or world markets: 75 per cent of our lumber, pulp, and paper and up to 90 per cent of our

* FOOTNOTE:— The decrease is attributed to the fact that British Columbia Capital Plant is operating to virtually full capacity. Moreover, the Auto Agreements have enhanced exports from other parts of Canada than B.C.—primarily Ontario.

minerals are shipped to foreign markets. British Columbia in 1963 was a greater earner of foreign exchange (\$624.48 per capita), (now \$645)—so vital to our international solvency—than the rest of Canada (\$333.67 per capita), (now \$398.50). British Columbia buys its manufactured goods largely from Ontario and Quebec, which are protected sources of goods for the captive British Columbia market. Anything that can be done to encourage and assist development in British Columbia greatly assists the rest of Canada.

The realities of British Columbia's international and national trading positions, which differ so much from those of Ontario and Quebec, justify the Bank of British Columbia with principal office in Vancouver to service effectively our distinctive trade needs.

The tremendous increase in capital investment in the Province is reflected in Table II. According to the Budget Speech of the Minister of Finance, delivered in the Provincial Legislature on February 11th, 1966, total capital investment of nearly two billion dollars was realized in 1965, about 14 per cent above the 1964 mark. Increased personal income, volume and value of industrial production, and a greater number of tourists assisted in the growth.

Moreover, the population of British Columbia increased by 3.8 per cent or 67,000 persons last year, to an estimated 1,838,000. This annual rate of increase is the highest in Canada. The labour force continues to expand and now comprises 666,000, up 4.2 per cent from 1964.

Capital investment in the forest industries reached an unprecedented high with the installation of an estimated \$250,000,000 in new manufacturing facilities. Substantial outlays were made in the sawmilling, plywood and veneer industries, but the pulp and paper industry accounted for the major portion of this expenditure. Total capital committed and planned investment in the pulp and paper industry alone exceeds \$1,000,000,000. The estimated value of forest production in 1956 is \$980,000,000. Pulp production increased 14 per cent, paper 11 per cent and plywood $6\frac{1}{2}$ per cent.

Mining records in British Columbia are being broken by extensive exploration and development projects. Major development work is being done at two copper properties in northwestern British Columbia, involving an investment in excess of \$100,000,000. In 1965 two large molybdenum properties came into production. The estimated value of mineral production in 1965 is \$271,000,000.

The 1965 estimated value of factory shipments, indicating provincial manufacture and growth of secondary industry, was \$2.9 billion, up 7.6 per cent from 1964. Exports to foreign countries through British Columbia ports are estimated at \$1.6 billion. Personal income increased 10.7 per cent. The number of American tourists rose by 10 per cent. Provincial retail sales increased to \$2.3 billion, up 8.5 per cent while residential construction was up 10 per cent and is estimated at \$337,000,000.

In summary, all economic indices, including the development of primary and secondary industries in the province point to the necessity for development and growth of financial institutions to match those of industry and it is suggested, that the establishment of this bank is a proper means to that legitimate end.

But what of the economic prospects for the future? The expectations for British Columbia during the balance of this decade—to 1970—predict a labour force rising from 578,000 in 1961, to 729,000, personal income rising from \$2.9 billion to \$4.5 billion, and retail sales rising from \$1.6 billion to \$2.4 billion in this same period. All circumstances involving greater use of credit, greater offshore trade, and general expansion set the stage regionally for more broadly based banking systems—with western headquarters. Expectations to 1975 are

even more attractive. It is conservatively estimated that the population of the province by that time will be about 2,400,000 and the rate of capital investment will have risen from its present level of nearly \$1,600 million a year to a figure approximating \$2,400 million a year.

Then the growth of the western Canadian economy is to be seen in the comparative table of bank branch expansion which I shall not bother reading at the moment. There follows a statement of cheques cashed at 35 clearing house centres in Canada, and you will notice that the per cent increase for British Columbia as shown in the last column is greater than that for any other province.

On page 18 we have a graph showing British Columbia capital and repair expenditure by selected years. In our previous brief we gave the estimate for 1975 as being \$2,400 million, and now this has been revised to \$2,850 million. Then we have a graph showing the British Columbia population estimate for 1975. In our previous submission it was shown as 2,370,000, and this has now been revised to read 2,410,000. Actually it shows that in 1970 we expect to have 2,075,000. And then in 1975, 2,410,000.

It is proposed, and indeed it is a provision of the bill, that the head office and executive office of the bank be in the City of Vancouver. That city has in recent years made great strides in its growth as a commercial and—subject to the limitations of not having a chartered bank—financial centre. That city is now the third largest in Canada and the largest metropolitan centre west of Toronto.

Still on the question of need, it is not an answer that the present banks are doing a good job and can expand their number of branches as rapidly as business requires. Such a reply could be used to support the proposition that any single national bank of Canada is in a position to expand as required and that competitors need not, in fact, exist to meet the national needs of banking.

The more proper question to be asked is whether there are opportunities for new banks in Canada today? In the light of the findings of the Porter Commission and in the light of the prospect of widening opportunities which are so clearly to be seen in the commercial activity of the country today, the answer surely must be yes. The Bank of British Columbia, however, adds a dimension to competition which not every bank proposal could add; that is, the dimension of regional competition, which is totally absent from banking in Canada at the present time.

CAPITALIZATION

The bill provides for capitalization of \$100,000,000. This sum exceeds the minimum for incorporation set out in the Bank Act and is several times in excess of the capitalization of the existing chartered banks prior to commencing operations. The broad capitalized base contemplated indicates that the provisional directors are convinced that the ability of the new bank to be successful, to achieve a responsible position among Canadian banks, and to avoid amalgamation depends on adequate financial resources. Every effort will be made to offer the shares throughout the whole of Canada through recognized investment houses. Because of protracted attempts to obtain incorporation the formal steps of stock issuance have not yet been undertaken.

Any doubt as to the likelihood of an over-subscription of the shares of this bank can quickly be dispelled by seeking the opinion of almost any person to whom you might wish to speak in any part of the Province of British Columbia and especially those in the investment community who pride themselves upon being knowledgeable about public response to such undertakings. There is not a shadow of a doubt that the share offering by the Bank of British Columbia will be heavily supported by public subscription in British Columbia and elsewhere in Canada.

It need hardly be mentioned that the provisions of the Bank Act as to the sale of stock and the requirements necessary to be met in that regard prior to the commencement of business will be fully met in all respects.

The price of the shares, subject to market advice at the time, is expected to be in the neighbourhood of \$25 to \$30.

It is suggested, with respect, that even if it can be assumed hopefully that the provisions of the Porter Commission will soon be implemented, that is not a valid reason for delaying petitions for incorporation of chartered banks prior to implementation. The Porter Royal Commission deals with the whole field of Canadian banking and finance, including loan companies, trust companies, investment dealers, finance companies, life insurance companies, as well as banks. The fact of the matter is that several applications for incorporation of these kinds of financial institutions have been granted by this Committee subsequent to the coming down of the Porter Commission Report. It is the law of the land now that is to be looked to in considering this application and not what it might be in the future or what it should be. Changes in the law subsequent to incorporation will have to be adhered to at the time.

OPERATION AND PERSONNEL

So as to ensure that the bank will maintain its Western character, the bill provides that the majority of the directors and the executive officers of the bank shall be resident in British Columbia. While other bank bills are silent on this question the profile of directors of existing banking institutions has given those institutions an eastern character. It is expected that the board of directors will be chosen so as to represent all sectors of the community.

As to personnel, the provisional directors have received many enquiries from persons at all levels of the banking community expressing their interest and indicating their desire to become associated with and a part of this venture. As I assured this committee previously, the name of an outstanding Canadian banker who will be president and chief executive officer of the bank will be announced in due course.

Senator FARRIS: Now that you are finished on that, the chairman said to me the other day, and I think very properly, that one of the problems we would have would be to satisfy this committee on the ability of the proposed bank to arrange satisfactory financing. I would like to hear something on that.

Mr. GUNDERSON: Well, the capital is to be raised on an agency basis through the efforts of licensed investment dealers and brokers in Canada. This bank, or for that matter any bank, according to section 14 of the Bank Act, cannot commence business in banking until it has obtained a permit to do so from Treasury Board. Section 14(2) provides that no application is to be made to Treasury Board for a certificate until the directors have been elected in accordance with the act, and of course no company can elect its directors until it has a shareholders' meeting, and we cannot hold a shareholders' meeting until we sell shares, and we cannot go on the market and sell shares until we have a charter. We are now at the first stage, and from here this bill has to go to the Commons. Then the various other stages would follow. But before we can operate an application must be made to Treasury Board which would have the approval of the Inspector General of Banks.

The CHAIRMAN: Perhaps at this stage you should describe briefly the proposed amendments.

Mr. GUNDERSON: Yes, the amendments made by the Commons in the bill concerning the Bank of Western Canada were taken from the draft of the new Bank Act, and were drafted by the Department of Justice for the federal Government.

Senator FARRIS: That is the Bank Act of last year.

Mr. GUNDERSON: Yes. The principle in the clauses deals primarily with the limitation of non-resident ownership of stock. The total of non-resident ownership of stock to be not more than ten per cent. Furthermore it deals with limitation on the shareholdings of any person and contains a prohibition against transfer to or issuance of shares to Her Majesty in right of Canada or in right of a province. In other words no provincial government can buy shares and no one person can hold more than 10 per cent of the issued shares.

Senator CROLL: You go further than that, do you not? You say that no provincial government or its agent directly or indirectly.

Mr. GUNDERSON: That is right.

Senator WALKER: That is set out at page 4, subclause 3.

Mr. GUNDERSON: Yes, and as I understand it, that precludes any transfer of shares to any government or any government instrumentalities, and so on.

The CHAIRMAN: A question also arises under section 10 of the Bank of Western Canada bill. Having regard to the provisions that were added in the Commons to that bill, these amendments you are proposing to your bill are effective as and when your bill becomes law and until such time as we have a new Bank Act.

Mr. GUNDERSON: Yes.

The CHAIRMAN: If in the new Bank Act you do not find these provisions then you will not be subject to them from that time on?

Mr. GUNDERSON: I presume so.

The CHAIRMAN: Is not that what clause 10 says? It says:

Sections 5 to 9 inclusive of this Act—

This is part of the amending material in the bill to incorporate the Bank of Western Canada.

—shall have effect notwithstanding anything in the Bank Act but unless otherwise provided by Parliament shall cease to have effect upon the last day upon which the Bank may carry on the business of banking under the provisions of section 6 of that Act.

That means the present act. When it dies these additions die, unless they are carried into the new Bank Act.

Mr. GUNDERSON: Yes.

The CHAIRMAN: Therefore, if we want to make sure that these provisions govern in the new charters that are granted there are two ways in which we can do it. One is by saying that notwithstanding anything in the Bank Act, this governs. The second thing we can do is to grind our teeth and say that when the Bank Act comes over to us we will see to it that it contains these provisions. Those are the only ways by which these provisions can be perpetuated.

Senator LEONARD: With all due respect, Mr. Chairman, I do not think that is right. All of these charters will expire with the expiration of the Bank Act, and all of them will be subject to the new Bank Act, whatever its provisions are.

The CHAIRMAN: Oh, yes.

Senator LEONARD: So, the only way we can maintain this position is to see to it that when the Bank Act comes before us it does contain these provisions?

Senator FLYNN: And if it does not? Why should we put this bank in a different position from the others?

Senator LEONARD: I agree. We should not.

The CHAIRMAN: I was only exposing the problem. If you will recall, we refused to report this bill the last time on the basis of the general policy that

provincial governments should not be permitted to be shareholders. I suppose the answer that might be made to that is that if the Government, as a matter of general policy in the Bank Act, does not incorporate such a provision we can do one of two things. We can accept it, or insist upon its containing these provisions. We have that control ourselves.

Senator ROEBUCK: We can go further than that, Mr. Chairman. If this bank is unjustly treated in comparison with others banks it may come back to us for an amendment. We will see justice done in all circumstances, though the heavens fall.

The CHAIRMAN: What I am doing at the moment is exposing all the pros and cons.

Senator FLYNN: It is the responsibility of the Government to lay down the policy in this respect. Our responsibility is to check to see that the petitioners have the capacity and knowledge—

The CHAIRMAN: It is part of our responsibility, as and when the new Bank Act comes to us, to add the terms of general policy if they are not in it.

Senator FLYNN: I do not accept that.

Senator BENIDICKSON: Yes, irrespective of Government policy.

The CHAIRMAN: Yes.

Senator FLYNN: I do not accept that.

Senator ROEBUCK: We are not bound by Government policy.

Senator FLYNN: I know, but we are—

The CHAIRMAN: I am talking about the proposed new Bank Act. It cannot become law until we pass it.

Senator FARRIS: Mr. Chairman, I think what has developed about these amendments indicates that they all have to go in now, otherwise when this bill goes before the Commons it is not going to be treated differently from Mr. Coyne's bill. I do not think any member of this committee has any objection to anything in these amendments. They only reinforce what is the proposed policy.

The CHAIRMAN: Where this fits in, senator, is that it would appear that clauses 5 to 10, which appear in the Bank of Western Canada bill as amended—

Senator LEONARD: We have an amendment before us. It gives the renumbering of the new clauses 6 to 11, so we do not need to refer to the bill to incorporate the Bank of Western Canada. These new clauses are in a memorandum that Mr. Burke-Robertson produced, I think.

Mr. W. G. Burke-Robertson, Counsel: At this point perhaps I might interject something to assist the committee. The sections that senator Leonard has indicated as forming the amendments to our bill were lifted holus-bolus from the Bank Act as proposed to Parliament in 1965. It was introduced in May of 1965.

In the explanatory note at the front of the document before honourable senators they will see that clauses 6 to 11 which are included here—that is, the proposed clauses 6 to 11 in this bill—were copied and adapted from clauses 52, 53, 54, 55 and 57 of Bill C-102, the new Bank Act which was before Parliament in May of 1965.

The CHAIRMAN: Mr. Burke-Robertson, all I was trying to do was fit in the proposed amendments. It appears to me that you would strike out clauses 6 and 7 by your amendments, and put in the proposed clauses 6 to 11 inclusive, and then you would renumber your original clauses 6 and 7 as the next two clauses?

Mr. BURKE-ROBERTSON: Yes, those two clauses would become clauses 12 and 13.

The CHAIRMAN: Yes. Do you follow that, senator?

Senator CROLL: As a matter of fact, I am ahead of you, Mr. Chairman. As far as I am concerned I have gone through this document thoroughly, and I think I understand it pretty well. I am prepared to move the adoption of the bill as amended.

Senator HUGESSEN: Mr. Chairman, as the one who put the spanner in the works last year may I say that I am perfectly happy with this bill with these amendments. I do not see any objection to clause 11. If we feel as a matter of policy that provincial governments should be prevented from holding shares in a chartered bank, and if the Bank Act as it comes to us from the Commons does not contain that provision, then I think it is up to us to put it in if that is our policy. I fully agree with Senator Farris. These amendments that are proposed now are exactly the same as the amendments made by the Commons to the Bank of Western Canada bill. If we pass this bill in the form in which it was when it came to us we know that these amendments will be inserted by the Commons, so what is the use of not amending it now. I agree with what has been said. I am perfectly happy to support the bill with these amendments.

The CHAIRMAN: Do you wish to hear any of the other witnesses?

Hon. SENATORS: No.

The CHAIRMAN: After all, they have come here. Do you agree with what has been said?

Mr. WILLIAM C. MEARNS: Yes, we do, Mr. Chairman.

The CHAIRMAN: Do you have anything to add?

Mr. MEARNS: No, we have nothing to add.

Senator LEONARD: The explanatory note says that these clauses are copied and adapted from certain clauses of Bill C-102. My understanding of the word "adapted" is that it simply means they are altered to meet the circumstances. Clause 6 on page 2 refers to sections 7 to 10. The adaptation there is the insertion of the reference to sections 7 to 10 instead of using the numbers of those sections as they were in the bill to amend the Bank Act.

Mr. BURKE-ROBERTSON: That is true, so far as it goes.

The CHAIRMAN: There is no change in the language?

Senator LEONARD: Is there any other difference?

Mr. BURKE-ROBERTSON: I was about to explain that there was a reference in the draft Bank Act to section 33, or section 30, or something else, but those were references to that draft bill. The one I am thinking of particularly is section 34. It says section 34 here, but that refers to section 34 of the present Bank Act. The draft Bank Act, because of some rearrangement of sections, referred to what in essence was section 34 but it had it with a different number because it was a new bill.

Senator LEONARD: The putting in of the appropriate section numbers is purely legal draftsmanship.

Senator CROLL: Yes, but you used the term "lifted holus-bolus," and that I understand to mean it was lifted word for word without any change.

Mr. BURKE-ROBERTSON: That is exactly what I said, senator, but modified to the extent that I have already mentioned, and modified in order to make it properly applicable—and the same amendment is in the Bank of Western Canada bill—to the circumstances today.

Mr. GUNDERSON: These amendments are exactly the same as you find in the bill to incorporate the Bank of Western Canada.

Senator HUGESSEN: Should we not have that checked by our own law clerk? It is fairly important.

Senator LEONARD: Perhaps he has checked it. Has he had an opportunity of checking this?

Mr. HOPKINS: I have not had a lengthy opportunity. We received the consolidated bill from the House of Commons only this morning, and I have looked at it only in the same way that the committee has.

Senator WALKER: With regard to clause 7, subclause 3 of the amendments, is that in exactly the same wording as the similar sections in the draft Bank Act? When the matter came up before the committee a year ago, the one objection was the insistence of the incorporators on allocating shares to the Government of British Columbia. That possibility has now been nullified by these amendments, which prohibit any government from holding shares in the Bank of British Columbia.

Mr. BURKE-ROBERTSON: There has been no change in the wording whatsoever.

The CHAIRMAN: You understand, of course, that we do not want consciously or even semi-consciously to approve of a reference that is not a proper reference. That is the only point I am making. When you referred to section 34 of the Bank Act that is a proper reference, and, I take it, that is so in the Bank of Western Canada bill, too?

Mr. BURKE-ROBERTSON: That is correct.

The CHAIRMAN: I wanted to be satisfied as to that.

Senator WALKER: I think we should approve this, Mr. Chairman.

The CHAIRMAN: I have a motion from Senator Croll that we approve and that I report the bill with the amendments agreed to today. That involves incorporation of the amendments which have been presented by the petitioners and also involves re-numbering two sections of the bill so that sections 6 and 7 will become sections 12 and 13. Is that understood by everybody? You have heard the motion of Senator Croll, that I report the bill with the amendments. Will you indicate in the usual way? All in favour? Contrary? The motion is carried.

Senator HUGESSEN: I suggest, Mr. Chairman, that the Law Clerk might be asked to check the references before this matter is dealt with in the house this afternoon.

The CHAIRMAN: By the time this report is ready for the Senate, the Law Clerk will have checked the references, and if they are not all right, instead of presenting the report in the Senate we will state that the matter will be referred back to committee? Is that agreed?

Hon. SENATORS: Agreed.

The CHAIRMAN: The committee will rise until 2 p.m.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 5

Second Proceedings on Bill S-17,
intituled: "An Act to amend the Bankruptcy Act".

THURSDAY, MARCH 24th, 1966

WITNESSES:

Department of Justice: Roger Tassé, Superintendent of Bankruptcy;
The Canadian Bar Association; The Canadian Institute of Chartered
Accountants; The Board of Trade of Metropolitan Toronto and The
Board of Trade of Montreal; all represented by the following: J L.
Biddell, F.C.A., Toronto; Michael Greenblatt, Q.C., Montreal.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Hugessen	Reid
Blois	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Kinley	Taylor
Cook	Lang	Thorvaldson
Crerar	Leonard	Vaillancourt
Croll	Macdonald (<i>Cape Breton</i>)	Vien
Davis	Macdonald (<i>Brantford</i>)	Walker
Dessureault	McCutcheon	White
Ferris	McKeen	Willis—(49)
Fergusson	McLean	
Flynn	Molson	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 9, 1966.

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Power, P.C., for the second reading of the Bill S-17, intituled: “An Act to amend the Bankruptcy Act”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, March 24th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Beaubien (*Bedford*), Beaubien (*Provencher*), Benidickson, Blois, Brooks, Burchill, Croll, Farris, Fergusson, Flynn, Gélinas, Gouin, Haig, Hugessen, Irvine, Kinley, Leonard, Macdonald (*Cape Breton*), Pearson, Pouliot, Roebuck, Taylor and Walker. (25)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill S-17, "An Act to amend the Bankruptcy Act", was further considered.

The following witnesses were heard:

Department of Justice: Roger Tassé, Superintendent of Bankruptcy. *The Canadian Bar Association; The Canadian Institute of Chartered Accountants; The Board of Trade of Metropolitan Toronto and The Montreal Board of Trade;* represented by the following: J. L. Biddell, F.C.A., Toronto, Michael Greenblatt, Q.C., Montreal.

At 11.00 a.m. the Committee proceeded to the next order of business.

At 2.00 p.m. the Committee resumed consideration of Bill S-17.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Benidickson, Burchill, Cook, Croll, Fergusson, Flynn, Gélinas, Gouin, Haig, Hugessen, Irvine, Kinley, Leonard, Pearson, Power, Smith (*Queens-Shelburne*), Taylor and Walker.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The same witnesses were again heard.

At 3.00 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, March 24, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill S-17, to amend the Bankruptcy Act, met this day at 9.30 a.m. to give further consideration to the bill.

Senator **SALTER A. HAYDEN** in the Chair.

The **CHAIRMAN**: I call the meeting to order. We shall commence this morning with a continuation of our discussion of Bill S-17, to amend the Bankruptcy Act, and no matter at what stage we are at 11 o'clock we shall then adjourn the proceedings to commence consideration of the bill to incorporate the Bank of British Columbia.

Senators, we start with section 1 of Bill S-17, which incorporates two new sections, 2A and 2B. The only suggestion we had yesterday was by the Credit Granters' Association to enlarge the area of blood relationship to include uncles and aunts. I think yesterday Mr. Tassé felt that maybe it was not a bad idea. However, I have been thinking about it myself since, and I am wondering why in blood relationship we should move ahead faster and encompass a larger field than does the Income Tax Act.

Senator **ROLL**: I do not think we should.

The **CHAIRMAN**: And therefore that section 1 in its present form goes far enough—if that is the view of the committee. Have you anything to add to that, Mr. Tassé?

Roger Tassé, Superintendent of Bankruptcy: I quite agree with what you have said, Mr. Chairman, and on further consideration that is the position I would like to take personally.

The **CHAIRMAN**: Then shall section 1, with the several new sections which are added to the bill carry?

Hon. **SENATORS**: Carried.

The **CHAIRMAN**: We come now to section 2. Mr. Tassé, I was not here during the first part of the submissions yesterday. Mr. Biddell, did your people make any submission in relation to section 2?

J. L. Biddell, Board of Trade of Metropolitan Toronto: No, we did not.

The **CHAIRMAN**: Section 2 deals with the enlarged powers of the Superintendent of Bankruptcy, and we dealt with that pretty fully when considering the bill on second reading. Any comment to make on that, Mr. Tassé?

Mr. **TASSÉ**: I may say that this clause deals with a particular problem, and it is the one that arises when a trustee has lost his license or is given a hearing after a report has been filed with the minister by the Superintendent to show cause why his license should not be suspended or annulled.

The major change here is that, whenever a trustee will be afforded a hearing as a result of a report being sent to the minister, the superintendent will have certain powers to step in right away and take certain measures to protect the estate.

The CHAIRMAN: Shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: On section 3, did you make any submissions on that yesterday, Mr. Greenblatt?

Mr. M. G. Greenblatt, Q.C.: Yes, I did.

The CHAIRMAN: What have you to say on that, Mr. Tassé?

Mr. TASSÉ: The suggestion that was made yesterday by Mr. Greenblatt was that some provisions should be incorporated in section 3A to protect the solicitor-client relationship privilege from infringement. I had given some thought yesterday to this suggestion. I would have thought that, if there are provisions in any particular province protecting this type of relationship, they would apply to any investigation carried on under 3A.

It is true, as Mr. Greenblatt stated yesterday, there were provisions added to the Income Tax Act in 1956 dealing with that particular point. I know, on the other hand, that in the Combines Act there are no such provisions and I do not know of any particular problem that would have arisen because of a lack of provisions of that kind in that Act. So, personally, I would think that the point would be covered by the common law of the province where the problem may arise, and that is the way I see the problem now.

Senator LEONARD: I would think that to protect the solicitor-client relationship privilege, something would have to be set out specifically in this bill.

Senator CROLL: I would think that we should not go any further than the income tax people go, who give that protection.

Senator LEONARD: But as far.

Senator CROLL: All right, but this goes further. This is a very far-reaching bill. We passed it rather lightly in the Senate, in trying to give you enough power so that you could do a real job. But there are rights of individuals here that are in great jeopardy and if they are used in the fashion that we do not foresee at the moment we are going too far. There is a desire to give the bankruptcy people authority, but I think you go far too far when you go beyond the Income Tax Act.

The solicitor-client relationship has been one that has come down through the years and it is a very important one for the client and for the solicitor too and that relationship should be protected.

The CHAIRMAN: The particular solicitor-client relationship privilege that I recall in the Income Tax Act has to do with the seizure of documents and whether the solicitor-client privilege attaches to those. That is why they have laid out that elaborate procedure, that when documents are seized and when the person whose documents are seized, or the solicitor, asserts a solicitor-client privilege, the documents are delivered to a trust company or someone else. Then the question of whether the privilege exists or not is first determined by the court, and if it is determined that it does exist, the Crown does not get the documents. If the privilege does not exist, the documents are delivered to the Crown.

I do not know that there is any reason why this section should go further. But then it strikes me that it is a question of policy. Mr. Tassé may not feel competent to deal with it, without consultation, on a question of policy. If that is the position, the only thing he can do is stand the section and let him get instructions from the minister.

Mr. TASSÉ: Yes, I have just expressed my personal opinion. I must say that I did not have much time yesterday to look into this problem. If the committee would let it stand, it would be possible to look into it further.

Some Hon. SENATORS: Let it stand.

The CHAIRMAN: We could stand 3A and 3B, those two parts, on the question of making some provision for the solicitor-client privilege.

Senator LEONARD: I wonder whether our own counsel might be of assistance, in case we feel it necessary to have solicitor-client privilege specifically put in the section.

The CHAIRMAN: I asked him a few minutes ago. Have you got a viewpoint you would care to express?

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: I think the situation is this, that it is a question of policy whether the solicitor-client relationship should be protected. I think that between counsel for the Department of Justice, assisted by Mr. Tassé, and myself, if the policy is agreed on the amendment will not be difficult.

Senator LEONARD: I wonder. If the policy of this committee is to have it in—I am not saying that that is the policy at the present time—it would be useful to have the amendment ready, in case that decision is made.

The CHAIRMAN: We have had this before, where a witness or a departmental officer takes the position that he would have to consult his superior. Then some of them have said: "We are embarrassed at the moment to assist in drafting something when we have no instructions." We have overcome that by simply asking our own counsel to make a draft.

Senator LEONARD: That is what I have in mind.

The CHAIRMAN: I would take it that that is the instruction of the committee now, that our Law Clerk make a draft of the amendment. Am I right in assuming that the view of this committee at the moment, subject to what the minister may communicate, is that there should be this solicitor-client relationship protection.

Some Hon. SENATORS: Yes, carried.

The CHAIRMAN: That is the view of the committee, subject to what the minister may say, and on that basis our Law Clerk will prepare a draft of amendment. Is that right?

Senator BROOKS: Right.

Section 3 stands.

The CHAIRMAN: Shall section 4 carry? This is a consequential amendment.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 4 is carried.

Shall section 5 carry? Have we representations on that?

Mr. TASSÉ: Yes. Representations were made yesterday in connection with clause 5. The suggestion was that in section 24A(3) the court "may" have the power to appoint an interim receiver when the condition described in (a) is existing; and that the court "shall" appoint an interim receiver when the condition referred to in (b) is existing.

Personally, I think that this is just a question of drafting and wording. If one looks at the section—I do not think that the court will have much discretion when the situation before it is the one described in (b). When we refer to (a), we have a situation where the court will have to come to the conclusion that it is necessary for the protection of the estate, and then, if this is established, the court is empowered to appoint an interim receiver. The other situation that is provided for is where a number of creditors ask for it; so I think that, if we

leave it as it is, there is not much doubt that the court will appoint an interim receiver when the condition in (5) exists and the purpose that the representatives who spoke yesterday wanted to achieve will be met.

Another representation made was that, after the word "when" in line 32, the words "it appears to the court that" should be added. I would go along with this suggestion.

Senator CROLL: How does it read then?

Mr. TASSÉ: It reads:

When it appears to the court that at least 5 per cent of the unsecured creditors—

The CHAIRMAN: I do not like to make an amendment just for the sake of making amendments.

Senator CROLL: It does not mean anything.

Senator WALKER: It is unnecessary.

The CHAIRMAN: The court is the authority that has to make that decision and the only way it can make a decision is on the matters before it.

Senator CROLL: Leave the section as it is.

Senator LEONARD: It strikes me that subsection (1) of that section is subject to subsection (3), that is, that the only case in which the court may appoint an interim receiver is if the conditions in subsection (3) are precedent. Is that clearly the understanding? Am I correct in that?

The CHAIRMAN: Yes.

Mr. TASSÉ: Yes.

Senator LEONARD: So that it would not really do to change the word "may" to "shall" in subsection 3.

The CHAIRMAN: That's right.

Have I a motion that this section shall carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now we come to section 6. Have you any comments on this, Mr. Tassé?

Mr. TASSÉ: Yesterday a suggestion was made that in respect to subsection 2 the word "shall" should be replaced by "may", and this is agreeable, so that it would be permissive for the creditors to vote as a class on a proposal instead of voting as a group of creditors—as a whole group.

The CHAIRMAN: Was this a suggestion that was made?

Mr. TASSÉ: This was a suggestion made by Mr. Greenblatt.

The CHAIRMAN: The suggestion was to change "shall" to "may".

Mr. GREENBLATT: Yes, I suggested this because there may be circumstances where there may be different classes of creditors, and I wanted this to operate as the mechanics' lien acts operate in some provinces and to do so this change would be necessary.

Senator LEONARD: I am wondering if this wording should not be "may or may not" because some people might feel that each class should vote individually, as the present wording stands. Is not the intention here that each class should vote independently?

The CHAIRMAN: The intention of changing "shall" to "may" is so that there is some room for discretion.

Senator LEONARD: I would be inclined to think that on the interpretation of "may" many people might think they should, and for this reason should we not make it more clear to show that they may vote independently?

The CHAIRMAN: I will ask Mr. Hopkins about that.

Mr. HOPKINS: For a long time there has been difficulty about "may" and "shall". Sometimes it is construed permissively and sometimes mandatorily. If you want to make it abundantly clear you could say "may or may not".

Senator KINLEY: With regard to section 6 there is a new phrase there "subject to the rights of secured creditors,"—that is new. Why has that to be accentuated at the present time? Are they not properly protected now?

The CHAIRMAN: Any comments, Mr. Tassé?

Mr. TASSÉ: That is just for the purpose of clarification.

Senator KINLEY: The present section reads then "creditors may by special resolution resolve to accept the proposal as made or as altered or modified at the meeting or any adjournment thereof". That is taken out and you put in simply "Subject to the rights of secured creditors,".

The CHAIRMAN: That is not taken out. There are some words added.

Senator KINLEY: It is underlined here.

Senator LEONARD: Under the present section 31 and before this amendment it is clear that that is subject to the rights of secured creditors, and this makes it so that he who runs may read.

The CHAIRMAN: It is merely putting in words what we think is in there anyway. Any other comment?

Mr. TASSÉ: There was another representation made yesterday to the effect that the trustee should be unable to vote on the proposal as a creditor or as a proxy for a creditor. This is the suggestion made yesterday by Mr. Houlden. The position that was taken yesterday by Mr. Houlden was that the trustee is the one who presents the proposal for the debtor, and he is in a good position to receive these proxies and to vote them at the creditors' meetings. The purpose of this amendment is to protect the creditors because the trustee is in a good position to solicit proxies. The trustee is, under a proposal, ordinarily very close to the debtor, and it is hoped that with this restriction and this impossibility that will be cast on him to vote for creditors as a result of his having proxies, to eliminate this type of solicitation.

Senator CROLL: This could become quite dangerous, could it not? It could leave the disposition in a very few hands. Take, for example, the little people who have small debts, \$100, \$200 or \$300, and they cannot take a day to go to the meeting, and the usual practice is for them to send their proxies to somebody they know, or perhaps do not know, and it is customary to give them to the trustee in those circumstances. If he cannot vote these proxies you will find a half dozen people who can come to the meeting and will be able to control the thing themselves. I think this is somewhat dangerous.

The CHAIRMAN: Following on what you say, Senator Croll, we have been told during the course of this hearing that the trustees are going to be even better than they have been heretofore by the supervision and checking and double checking, and if we are going to appoint men of that calibre then we come along and say "We have checked you in every way we can, but we are not going to trust you properly to convey the views of creditors who send their proxies in to you and to vote at this meeting." I think it is going too far.

Senator CROLL: Much too far.

The CHAIRMAN: It may defeat its purpose in the sense that you will be likely to get a less comprehensive expression of the viewpoint of a great many creditors.

Senator CROLL: You have made the premise that if Mr. Tassé has the right sort of trustee and if you say he has not the right to vote, then, surely, there are other ways of handling it.

The CHAIRMAN: If he cannot be trusted to vote, well, then, get rid of him. Don't just take his vote away—get rid of him.

Senator LEONARD: This should stay as far as the trustee himself is concerned.

The CHAIRMAN: Yes, but take out the words "as a proxy for a creditor".

Shall subsection 3 of section 6 be amended by striking out the words "or" as a proxy for a creditor"?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 7.

Mr. TASSÉ: There were a number of representations made yesterday, some of them very minor ones. It was suggested that to be consistent with the wording used in the act in other sections the word "approve" in line 13 of section 32B (1) be replaced by "accept", and the word "approve" in line 20 of section 32B (2) should be replaced by "accept". This is quite agreeable.

The CHAIRMAN: Was that the only comment we had on that?

Mr. TASSÉ: There is another problem that arises in section 32B, subsection (2). The problem arises in connection with section 43 (1) of the Bankruptcy Act which says that:

Every receiving order, or a true copy thereof certified by the registrar or other officer of the court that made it, and every assignment, or a true copy thereof certified by the official receiver, may be registered by or on behalf of the trustee in respect of the whole or any part of any real or immovable property—

So here in section 32B we have the situation where a person has made a proposal which is not accepted by the creditors. The trustee then reports the matter to the official receiver. Now, the question that was raised yesterday is how do we proceed to make the necessary registration against immovable or real property of the bankrupt. I think that this can be corrected easily by adding after the word "Superintendent" in subsection (2) the following words—I will read the whole of the subsection together with the words that I suggest should be added:

Where the creditors refuse to approve a proposal described in subsection (1), the trustee shall forthwith file a report thereof in the prescribed form with the official receiver and the Superintendent—

and now come the additional words:

—and the official receiver shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect, for the purpose of this act, as an assignment filed pursuant to section 26. I think that with those extra words we will correct this practical problem.

Mr. HOPKINS: Can we have that in writing?

Mr. TASSÉ: I will repeat it. The additional words are:

—and the official receiver shall thereupon issue a certificate of assignment, in the prescribed form, which has the same effect, for the purpose of this act, as an assignment filed pursuant to section 26.

The CHAIRMAN: The committee has heard the suggested changes, namely, that the word "approved" in subsections (1) and (2) of section 32B, which is contained in clause 7 of the bill, be changed to "accept", and that the words that Mr. Tassé has read be added at the end of subsection (2) of the new section 32B.

Senator LEONARD: Is this wording approved by those who made the suggestion?

The CHAIRMAN: Mr. Biddell?

Mr. BIDDELL: Yes, Mr. Chairman.

Senator FLYNN: If my memory serves me correctly someone observed yesterday that section 32A should be more explicit in respect of the proposal—

Mr. TASSÉ: Yes, I had forgotten about that representation. I am sorry. I think it was said that the inspectors should have the same duties, and also be entitled to the same remuneration as if they were acting under the other provisions of the Act. I think that this point is covered by section 38(1) of the Bankruptcy Act which provides that all the other provisions of the act apply *mutatis mutandis* to the provisions dealing with proposals.

The CHAIRMAN: Yes.

Mr. TASSÉ: I think that that would settle that problem.

Senator FLYNN: I was not too sure.

The CHAIRMAN: Section 38(1) reads:

All of the provisions of this Act, in so far as they are applicable, apply *mutatis mutandis* to proposals.

Mr. BIDDELL: Mr. Chairman, could we ask Mr. Tassé whether he proposes to deal with the subject of how the trustee is appointed? That was the main suggestion we had. We were concerned that where the creditors refuse to accept the proposal, this subsection merely says that the trustee shall forthwith call a meeting of the creditors, which means that he will be the trustee under the Bankruptcy Act. We were very concerned that the creditors at this meeting, which is the first time they meet, should be able to say who the trustee is going to be.

Mr. TASSÉ: I think that that is a question of policy, and I would suggest that the committee let this particular point stand. Possibly I can come up with a suggestion when the committee meets later.

The CHAIRMAN: This question relates to proposals. When an insolvent person makes a proposal he makes it through a licensed trustee; is that right?

Mr. BIDDELL: That is right.

The CHAIRMAN: If the proposal is not accepted by the creditors then there is deemed to be an authorized assignment as at that moment. Then, the question is: Who is in charge of the estate at that moment?

Mr. BIDDELL: Yes.

The CHAIRMAN: This section would assume that the trustee who presented the proposal is, but is that necessarily so under the act itself?

Mr. GREENBLATT: Our main concern is that once the proposal is refused and the same trustee is retained and he proceeds to send out notices by virtue of the assignment that then follows calling for a meeting of creditors, then at this next meeting of creditors which is called by the trustee for the purpose of appointing a trustee, the inspectors' trustee can only be dislodged by a vote of ordinary unsecured creditors having claims amounting to 75 per cent, and who are 51 per cent in number. This creates a very difficult situation. It means that a debtor may, through a trustee of his choice, file a proposal which may be quite a frivolous proposal, and his named trustee will automatically remain as trustee. We say that if at the meeting where the proposal is being rejected the creditors want the trustee to be changed, then he should be changed by ordinary instead of by special resolution. An ordinary resolution is adopted when approved by 51 per cent of the amount of the ordinary claims and by 51 per cent of the number of the ordinary creditors.

The CHAIRMAN: I think that that is a worthwhile suggestion. Is there really any policy on that, Mr. Tassé?

Mr. TASSÉ: I think the question is really one having to do with section 6 of the act which prescribes the manner in which the trustees are to be appointed, or substituted to other trustees. I think that this is a very important section. Personally, I think there is a lot of merit in the suggestion that has been made, and I would favour some clarification of this provision.

The CHAIRMAN: Yes, if you had a provision here as another subsection simply saying that in cases of this kind the trustee only holds office for the purpose of convening a meeting at which a trustee shall be selected by the creditors, would that meet the situation? How would that strike you, Mr. Biddell?

Mr. GREENBLATT: But, under the regulations now—

The CHAIRMAN: All right; suppose we say “notwithstanding any other provision in the act”?

Mr. GREENBLATT: Yes, we would have to state that, because the other provisions of the act would compel the vote to be determined only by special resolution, which would involve 75 per cent in amount and 51 per cent in number.

The CHAIRMAN: We could say that notwithstanding any other provision in the act, in the particular circumstances of this case the trustee only holds office for the purpose of convening the meeting, and the meeting shall itself by ordinary resolution—

Senator FLYNN: I think it is necessary to clarify the situation. I am not too sure that if we say there is an assignment here it means that the official receiver would have to appoint the trustee at that time as if it was an ordinary assignment.

The CHAIRMAN: Well, if you have an amendment along the lines I have suggested then you accomplish two things. You take care of that situation and, secondly, you have the trustee in there only for the purpose of the meeting. The creditors then by ordinary resolution select a trustee. I think that that might be the subject of an amendment which our law clerk might prepare as another subsection to section 32B.

Senator LEONARD: Would it be possible for the amendment to provide that the naming of the trustee should take place at the meeting that refuses to accept the proposal?

The CHAIRMAN: Well, that would be expeditious. What do you say about that, Mr. Biddell?

Mr. BIDDELL: I think that that would be very much better. Here the creditors are brought together, and they are not willing to accept the trustee. Probably if the petition was filed by somebody else the debtor would not want the trustee named on that petition. Now, he puts forward a completely frivolous proposal, and the creditors come together and reject it. That is the time at which they should have a chance to put in their own trustee without any hiatus in time. If it has to wait in the hands of the trustee named by the debtor until a new trustee is appointed, then the creditors are prejudiced.

The CHAIRMAN: I think that is a good idea. Does that strike the committee as being a good way of dealing with it? Can you draft an amendment in that way, Mr. Hopkins?

The LAW CLERK: Yes.

The CHAIRMAN: Shall we say, “At the creditors meeting at which the creditors refuse to accept a proposal”?

Senator FLYNN: In that way it will be changed into a creditors meeting.

The CHAIRMAN: That is right.

Mr. BIDDELL: In that way they will have a trustee of their choice by their own resolution. That will be in the creditor's interest, and I think that would be the most expeditious manner of dealing with it.

The CHAIRMAN: Honourable senators, I think we have covered all the points in section 7. I take it you approve the change from the word "approve" to "accept", and also the other amendment to add at the end of subsection 2 of section 32B in connection with the certificate of assignment, etc.

Now this new point as to having the creditors, when they refuse to accept the proposal, convert into a meeting of creditors for the purpose of selecting their trustee. I think our Law Clerk should draft that, and that we should stand that part of the section so that Mr. Tassé can consult his superiors on the point.

I take it that we have approved section 7, other than to stand the exception which our Law Clerk is going to draft?

Hon. SENATORS: Agreed.

The CHAIRMAN: Now, section 8.

Mr. TASSÉ: A number of representations were made here. The first was a suggestion that in respect of subsection 6 the levy provided by section 106 of the act should not apply to shares paid by the debtor under the proposal; and the objection to having the levy made applicable to these shares was that it would be very difficult to assess the value of these shares.

The CHAIRMAN: I take it that the committee understands the meaning of the word "levy". It is a fee that the Superintendent of Bankruptcy exacts so as to maintain his office in whole or in part; is that right?

Mr. TASSÉ: That is right; and it is applicable to all of the payments made by the trustee under the act.

The CHAIRMAN: And the proposal here was—

Mr. TASSÉ: To exclude from the application of section 106 the shares given in payment by the debtor under the proposal. This is a serious problem and I would suggest that this problem stand so that I can look into it further and have consultations.

The CHAIRMAN: Is there any other question?

Mr. TASSÉ: Yes, there are other questions. It was suggested also that the levy should not apply to payments made to secured creditors by the trustee. In this respect I would suggest that section 106 should stand as it is and should be applied as interpreted by the jurisprudence to these proposals. In other words, if the trustee is acting as an agent for a secured creditor the jurisprudence has decided that section 106 should not apply because these payments by the trustee were made outside of the administration of the estate. Whenever this situation arises, the same principle would apply.

Now, I think that the suggestion really concerns section 106, and that we should not open up section 106 at this time.

The CHAIRMAN: Of course, if you made an exception in the section we are dealing with you would not be opening up section 106, would you?

Mr. TASSÉ: Then the question would arise why there should be an exception in the case of a proposal and no exception in the case of an estate in bankruptcy. In other words, I suggested that the question of levy should stand as it is, should remain in the *status quo*, and these cases be decided according to the principles elaborated by the jurisprudence and the decisions of the court.

Senator FLYNN: Are you suggesting then that section 106 is not being amended by this act?

Mr. TASSÉ: Yes.

The CHAIRMAN: Are you saying that section 106 would not extend to include a proposal that has been accepted—

Mr. TASSÉ: I say it will apply.

The CHAIRMAN: Yes, I thought so.

Mr. TASSÉ: I may add that in these cases where we will have a proposal, where the trustee will be distributing all the money, including that of the secured creditors, it will be subject to the surveillance of the Superintendent, and I see no reason why there should be a distinction between these moneys paid to secured creditors as opposed to unsecured creditors.

Mr. BIDDELL: I would be prepared to let section 106 stand as it is now so that representations can be made to the committee.

Mr. TASSÉ: I think that the other problem that arises is that in some cases the debtor will issue promissory notes to discharge his obligations under the proposal. The suggestion that was made yesterday was that if payment is to be made in money the Superintendent should not be paid before these notes are paid. The other alternative would be that the Superintendent be given a note which would be paid at the same time as the other notes. I think this is a question of interpreting these different sections. I might say that the interpretation we now give to it is that whenever notes are issued the Superintendent will take notes like any other creditor in payment of the levy and he will be paid on them at the same time as the other creditors are paid. So I do not think there is any need for further expansion of the section, and I think that the problem raised would be settled administratively.

Mr. BIDDELL: Agreed.

Mr. TASSÉ: Section 8 is a long section and there is another problem that arises on page 8, at line 12. It is suggested that the word "authorize" should be stricken out.

The CHAIRMAN: Why?

Mr. TASSÉ: Because it refers to an authorized assignment, which has a history of its own; it refers to a particular kind of assignment under the old act.

The CHAIRMAN: Do you accept that?

Mr. TASSÉ: Yes, I accept that. There is another point I have to mention here, and it is the same problem that we just discussed in respect of 32B(2): the certificate of assignment prepared by the Official Receiver. In section 32B we have the case where the proposal is not accepted by the creditor. Now, in section 34(10) we have the case where the proposal has been accepted by the creditors but is not approved by the court, and the same consequence follows.

In this case again, words should be added at the end of subsection (10), so that the official receiver will be empowered to prepare a certificate of assignment which could be filed with the registry office.

The CHAIRMAN: So we add at the end of subsection (10) of the new section 34 the same language as we added at the end of subsection (2) of the new proposed section 32B?

Mr. TASSÉ: Right, Mr. Chairman.

Senator LEONARD: There will have to be a difference, because there is no meeting of creditors in that case. It is a decision by the court and probably the wording should be that the court should name a trustee.

Mr. TASSÉ: Mr. Senator, I think there are two problems. You are quite right in saying that also consideration should be given to considering the same amendment that the committee has agreed to consider, in respect of the appointment of another trustee under section 32B.

The CHAIRMAN: Yes.

Mr. TASSÉ: But the problem I was alluding to was in respect of this certificate of assignment that has to be prepared by the official receiver.

Mr. GREENBLATT: May I respectfully bring to the superintendent's attention, and to the attention of honourable senators, that at that particular stage where the court is refusing to approve a proposal which has been accepted by the creditors, the creditors are not present. There is simply a petition made by the attorney for the trustee, to have the proposal ratified; and the court would not really be in a position to know the wishes of the creditors.

The CHAIRMAN: So, we do not need that second amendment in this case, because it would not be expeditious?

Mr. GREENBLATT: It would not be workable.

Senator FLYNN: On the other hand, we have to provide for the machinery to appoint the trustee.

Mr. GREENBLATT: A trustee is appointed by the certificate of the official receiver and that trustee calls a meeting of creditors in the normal way, where the trustee is open to appointment.

Senator FLYNN: Is it clear that the trustee is appointed by the official receiver who has made the proposal?

Mr. GREENBLATT: The way the section reads now is that the trustee of the proposal, when the official receiver certifies that an assignment has taken place, would then proceed to call the meeting of creditors. It is always the privilege of the Official Receiver to change the trustee.

Senator FLYNN: I want the creditors to have their choice, but at the same time we have it here, where the court refuses to approve a proposal of the trustee, where it refuses the approval of the proposal, then there is no right to appoint, and it says "the trustee". Which trustee? Is it the trustee who refused the proposal or the one appointed?

Mr. GREENBLATT: The trustee named under the authorized assignment. The official receiver still has power.

Senator FLYNN: I doubt if even this is clear.

Mr. GREENBLATT: I think it should be clarified.

Senator FLYNN: You may give the task to the trustee of the proposal to call a meeting of the creditors, specifying that at that meeting the creditors will be in a position to appoint there and then a trustee.

Mr. GREENBLATT: May I add another word? The situation where the proposal is refused by the court is not the same as where the proposal is refused by the creditors. Because where the proposal is accepted by the creditors and then goes to the court for ratification, the creditors appear to be satisfied with both the proposal and the trustee.

The CHAIRMAN: That is quite true, but Senator Flynn thinks there should be some clarification. In the first amendment, we did two things. One was, we were defining or limiting the function of the trustee who conveys the proposal. We are also providing for converting the meeting of creditors to approve the proposal, into a meeting at which a trustee would be appointed—not necessarily the one who conveyed the proposal.

Now, when the creditors approve and then the court refuses to approve, there is no immediate way of knowing it and so there is no ruling in relation to that. The other query is, even when the creditors have approved the proposal, they must think it is all right and that the trustee is all right, should the trustee simply have his function limited to calling a meeting of creditors at which by ordinary resolution a trustee will be selected? And that is really Senator Flynn's point.

Senator FLYNN: That is my view, too, because if the court has refused a proposal there may be something that will change the viewpoint of the creditors with respect to the appointment of the trustee.

The CHAIRMAN: Would you have any objection to that, Mr. Tassé?

Mr. TASSÉ: No, I think it is quite in order.

The CHAIRMAN: And you have no objection, Mr. Greenblatt?

Mr. GREENBLATT: No, none at all.

The CHAIRMAN: Now, for our Law Clerk, do you think you can put that on paper?

Mr. HOPKINS: I can try.

The CHAIRMAN: Do you understand what the point is?

Mr. HOPKINS: I do.

The CHAIRMAN: Subject to these amendments, section 8 is carried.

The CHAIRMAN: Section 9.

Mr. TASSÉ: A suggestion was made yesterday in respect of subsection (1) of section 36, to the effect that the trustee should receive a notice of the application to annul the proposal. I am quite agreeable to this change. I would suggest that, beginning in line 29, on page 8 of the bill the subsection could read as follows:

the court may, on application thereto, with such notice as the court may direct to the debtor and, if applicable, to the trustee, and the creditors, annul the proposal.

The CHAIRMAN: Subsection (1) as amended—is that approved by the committee?

Hon. SENATORS: Agreed.

The CHAIRMAN: It is agreed.

In subsection (4), which is on page 9, line 3, take out the word “authorized”. Is that agreed?

Hon. SENATORS: Agreed.

The CHAIRMAN: It is agreed.

Senator FLYNN: Paragraph 5 should be in some concordance with the amendment to be drafted with respect to the appointment of a trustee after the court has refused to approve a proposal. Here again, when the order annulling a proposal has been made, the trustee shall forthwith call a meeting of the creditors and file a copy of the order. We have to appoint the trustee again.

Mr. TASSÉ: The suggestion made yesterday—though I do not know whether Mr. Greenblatt and those with him would have the same suggestion to make now, in view of the discussion the committee has had today—that, after the word “shall” there should be added the words “unless the court otherwise ordered”.

Senator FLYNN: But the rule is that the trustee to the assignment—

Mr. TASSÉ: I think it would be preferable to go along the line taken in the other two cases.

The CHAIRMAN: That is, if there is an order annulling a proposal which has been accepted by the court, the trustee shall forthwith call a meeting. What does he do at that meeting? The first order of business should be the appointment of a trustee by ordinary resolution. Is that good enough for you, Mr. Greenblatt?

Mr. BIDELO: Probably at this time it is long after the proposal, there are no assets, and no trustee will take the thankless job, which is costing a lot of money and for which he cannot be paid. So I think it has to be left with the official receiver to find a trustee who will take the matter.

Senator FLYNN: One way or the other, but the meeting of creditors should be free to select a trustee if one is called.

The CHAIRMAN: They would be free by special resolution at that stage. Is not that right?

Senator FLYNN: Here again it has to be clear whether it is the trustee to the proposal or the trustee appointed by the official receiver after the annulment of the proposal and the assignment or the deed authorizing the assignment which follows.

The CHAIRMAN: Let us take it this way; if you have a proposal presented through a trustee and the proposal is accepted, then the trustee is established by machinery we have already suggested by way of amendment. So the creditors make the selection. Then the proposal is annulled. But you still have the trustee in there by the ordinary processes of the creditors. Why do anything about it? Why not leave him there?

Senator FLYNN: It is not quite the same thing.

The CHAIRMAN: No, because the procedures we have provided in the amendment have taken care of it. But now we have the situation where the proposal is annulled.

Senator FLYNN: In the annulment the trustee may be a problem which may be raised by the creditors. I don't think we should take it for granted at that stage that the trustee is still the choice of the creditors. I do not think it would be logical.

The CHAIRMAN: No, except that you are talking about removal for cause at that time and not just for whim. But they have gone through that at their discretion and made a selection.

Senator FLYNN: Remember the trustee is a person who is usually selected by the debtor himself.

The CHAIRMAN: But once the proposal is accepted the trustee is elected by the creditors.

Senator FLYNN: But if they change it.

The CHAIRMAN: That is the change we made earlier.

Mr. BIDDELL: I think the honourable senator is speaking of a situation where the creditors have made their choice and the proposal is annulled soon after. But we are thinking of a situation where the proposal is annulled two or three years later, and the trustee does not want to go on because it is a thankless job. We do not want the trustee to be forced to act when it is against his wishes to act and we feel the court should be permitted or should have the authority to order otherwise. That is the purpose of our amendment.

Senator FLYNN: That is one aspect of it. I have another viewpoint.

The CHAIRMAN: Shall we carry subsection 5 in the form in which it is?

Mr. TASSÉ: We have here the same problem as we had with subsection 2 of 32B, and subsection 10 of section 34 about the official receiver.

The CHAIRMAN: You mean about the certificate of assignment?

Mr. TASSÉ: Yes.

The CHAIRMAN: We have to add the same language as you have in there in subsection 2 of 32B.

Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: There is one item we skipped back in section 2B which was raised yesterday, and that deals with a situation where shares have been pledged. You will recall that Mr. Biddell and the Credit Granters raised the question that if a creditor took a pledge of shares he might find himself, under the present wording of 2B, in the position of controlling the company by virtue of the quantity of shares pledged, then he would get into this non-arm's length position where his position would be deferred to that of others. You heard the Credit Granters representations?

Mr. TASSÉ: Yes, I did.

The CHAIRMAN: What have you to say about that? Should there be an exemption there for the lender who takes a pledge of shares as security for a debt?

Mr. TASSÉ: I don't think so. Here we have the case of a person who gets the control of the person who subsequently becomes bankrupt. If he places himself in the situation of having control, I think we should not distinguish between his case and other cases. The catching clause is not whether the person was dealing at arm's length; the catching clause is to be found in 67A and if these persons happen to have entered into a transaction for a consideration that was exorbitant or out of line, then I think there should be no reason why this particular person or company or lender should be exempt from the effects of 67A. It is not the fact that they are dealing with each other at arm's length that involves the consequences. The main consequences attaching to these transactions are found in 67A, and I can see no reason why if a company places itself in the position of having control of another concern and if subsequently we find that there was a transaction which was reviewable within the meaning of 67A, I cannot see why the same consequences should not attach as they would in any other case.

The CHAIRMAN: Yes, but let us distinguish here—if there is collusion or fraud you can get at such matters under the present act, can you not?

Mr. TASSÉ: I am not thinking of collusion or fraud. I am thinking of two persons not dealing at arm's length. The only thing I can say is that this is not the material fact. The material fact is that we have two persons who are having control of one another, and if it is found that these two persons have entered into a transaction which is reviewable then it should be examined by the court.

Senator GOUIN: Where is this section? What page is it on?

The CHAIRMAN: It is on page 2 in subparagraph (iii) (c).

Mr. BIDDELL: I think the point is well taken as was the point made by the Credit Granters' Association. But we should bear in mind that it is common for the Industrial Development Bank to take shares of a company for a loan, and in the absence of any change the Industrial Development Bank would have to have its transaction reviewed by the court. This would be in order to eliminate the arm's length suggestion. Similarly this could happen to chartered banks who also do this quite frequently. In every case that has come to my attention the court would say it was a proper transaction because there was money loaned. But it seems to me that it would force the I.D.B. and the chartered banks to have their transactions reviewed by the court.

Senator FLYNN: It is at the discretion of the trustee to have it reviewed?

Mr. BIDDELL: That is where the change comes in, in that it does not have to be reviewed by the court now. This takes care of the situation perfectly.

Senator CROLL: Mr. Chairman, may I at this stage suggest that our Clerk should get busy and notify other members of the committee that we have an important meeting at 11 o'clock.

The CHAIRMAN: This might be a good place to break off the present consideration. But now that I have you in the mood for work if we finish the bill concerning the Bank of British Columbia by a quarter to one we could perhaps then resume at two o'clock and again deal with this act to amend the Bankruptcy Act. We could simply adjourn further consideration of this bill until two o'clock and at eleven we can start to consider the Bank of British Columbia bill.

Senator FLYNN: Do you think, Mr. Chairman, that we will be able to get much work done this afternoon? It seems to me that in an hour we may not

achieve very much. If we could complete the section-by-section review it might be worth while, but not otherwise. Will the witnesses still be here?

The CHAIRMAN: They were here yesterday and they made submissions, and they were kind enough to stay over this morning and they have been very helpful to us. That is why I thought we might continue consideration of this bill this afternoon while they are still available. If we can even complete three, four or five sections, it will be that much out of the way.

Senator LEONARD: Is section 10 going to take so long? Is there unanimity on clause 10?

Senator CROLL: The discussion of clause 10 will take quite some time.

Senator LEONARD: Do you think it will take very long?

Senator CROLL: Yes. I am in favour of striking it out, but it is not that easy.

The CHAIRMAN: Senator Leonard, I am satisfied that there will be some discussion on clause 10. We will adjourn our discussion of this bill at this time.

The committee adjourned.

At 2 p.m. the committee meeting resumed.

The CHAIRMAN: Honourable senators, we were dealing with section 10 of the bill, which starts on page 9. I thought I might ask Mr. Biddell to state in a summary way his view; and then we would see what Mr. Tassé has to say about any suggested change.

Mr. Biddell, would you care to do that?

Mr. BIDDELL: Mr. Chairman and honourable senators, it seems to me that, in summary, the position is this:

(1) Under the present Section 39 the income of an individual bankrupt is subject to seizure by his trustee from the date of bankruptcy until the debtor's discharge when the court will relieve him of all his debts or perhaps require him to make some further payment.

(2) Trustees in most areas of Canada, excepting Quebec, are tacitly ignoring their obligation to seize any part of the wages earned by these people between the date of bankruptcy and the date of discharge. They are not seizing this money because to do so in the vast majority of cases would only continue the situation which forced the debtor into bankruptcy in the first place, i.e. he cannot earn a living because very few employers will put up with the nuisance of garnishee orders.

The former Superintendent of Bankruptcy expressed concern that many of these bankrupts were neglecting to apply for their discharge. For this and perhaps for other reasons he reminded trustees in the Province of Quebec of their duty to seize post bankruptcy income and as a result this is now being done in Quebec—but still not in many other areas.

Business organizations selling or lending directly to the general public naturally wish to collect their accounts and would like to make it as difficult as possible, if not impractical, for their customers to go personally bankrupt. Collection agencies acting for them are vitally concerned with achieving such a result, or in the alternative, are concerned that in spite of bankruptcy the individual debtors should be required to continue to make payments.

There is an increasing tendency for the courts to heed the representations which creditors and their collection agencies are making when applications for discharge are being heard. In Ontario the courts are in many cases requiring long-term contributions from future income of the debtor as a condition of his discharge. If this practice continues, and if the desirability of such a policy is

emphasized by Parliament enacting Section 39A of this Bill in its present form, those who extend consumer credit and the collection agencies will have achieved their objective.

There will be little point in an individual going bankrupt because he will only be exchanging harassment by the trustee for that which he has been receiving from his creditors. The only essential difference will be that the debtor's money will for the most part go to collection agencies and trustees instead of collection agencies and creditors.

We do not believe that personal bankruptcy is a serious problem in Canada at the present time. If the Government fears that it may become so, we believe that there are better measures for controlling it than those proposed in this bill. We believe that, as an interim measure, until the whole Act is overhauled, the proposed Section 39A should be amended as follows:

The word "shall" in line 23, should be changed to "may";

and that "(ii) Subsection (5)" of the proposed Section 39A be deleted.

We further propose that a clause be added to the existing Section 39 of the Act as follows:

The provisions of this Section (39) shall not be deemed to apply to salary, wages or other like remuneration earned by the bankrupt between the date of his bankruptcy and the date of his discharge.

We believe that if the proposed Section 39A and the present Section 39 are amended in the foregoing manner, we would have available to both the credit granters and the public a reasonable as well as an effective compromise. Bankrupts who, in the opinion of the trustee and inspectors, are deserving of relief from garnishee of their wages, could obtain this relief without the necessity of a court application. If, however, the post bankruptcy earnings of a debtor were deemed to be such that a contribution should be made, the trustee, with the consent of the inspectors, could ask the court to rule on the matter.

It was pointed out here yesterday that the amendment we were proposing would also require an amendment to the present section 39. With this we agree. In other words, with regard to section 39, which says that the after acquired property of the bankrupt is subject to seizure by his trustee, we would like to see that amended so that it does not refer to income from salary and wages. We suggest that salary and wages, on the other hand, be dealt with strictly under the new section proposed by this bill, but that the new section be made permissive so that the trustee and inspectors could look at the situation. If they felt that this man's earnings were such that it would be improper to seize more for his creditors, they would refrain from doing so. If, however, he was in receipt of a very substantial income in relation to his debts, they would have an opportunity to apply to the court for an order.

We think these amendments as proposed would be a reasonable compromise.

The CHAIRMAN: Mr. Tassé, what do you have to say?

MR. TASSÉ: If we look at the statistics for recent years, we find that there is a steady increase in the number of personal bankruptcies in Canada. There has been a steady increase also, in the Province of Ontario, in the number of estates coming under the summary administration provisions of the act. For the first time, in 1965 the number of estates administered under these provisions of the act in Ontario were higher than the number administered under these provisions in the Province of Quebec.

Senator BENEDICKSON: What are the actual figures, to back up the general observation?

Mr. TASSÉ: All of the estates administered under the provisions of the act, totalled, for example:

In 1955	2,414
In 1960	3,641
In 1962	4,297
In 1963	5,189
In 1964	5,562

There was a drop in 1965, and the total in that year was, if my recollection is correct, 5,106.

The CHAIRMAN: That is the total of what?

Mr. TASSÉ: The total number of estates administered under the provisions of the act.

The CHAIRMAN: All categories?

Mr. TASSÉ: All categories, except proposals.

Senator BENIDICKSON: That is for all of Canada?

Mr. TASSÉ: Yes.

Senator BENIDICKSON: I asked for the figures with respect to personal bankruptcies in Ontario and Quebec.

Mr. TASSÉ: For the Provinces of Ontario and Quebec the figures that I am about to give the committee are approximate, as I have only a chart here before me.

The number of estates coming under the summary administration provisions of the act, in 1964, in the Province of Ontario, was about 1,650 and in Quebec there were about 1,500. In 1963 in the Province of Ontario there were 1,200 and in the Province of Quebec approximately 1,300. In 1962, in the Province of Ontario there were approximately 900 and in the Province of Quebec 1,250.

Senator BENIDICKSON: Have you got the figures for 1955?

Mr. TASSÉ: In 1955, in the Province of Ontario there were less than 150; and in the Province of Quebec there were approximately 1,000. Another thing I would like to mention is that I am afraid that Mr. Biddell's statement that in the Province of Quebec the trustees would obtain an order directing the bankrupt to deposit the seizable portion of his salary with the trustee for the benefit of his creditors, is not according to the facts. Notwithstanding the fact there was a directive issued some time ago by my predecessor asking the trustees to obtain an order, where there was a salary earned by the bankrupt, directing the bankrupt to deposit the seizable portion of his salary, the trustees in the majority of cases would not do it. The particular problem we are faced with is that the bankrupt or debtor will go and consult a trustee and for a set fee of \$300 or \$400 he will get the assurance that he will obtain his discharge without having to contribute anything more to the estate.

I think this is a very serious problem, and anyone who wants to avail himself of the Bankruptcy Act should know that he has to contribute, if he can, something to the estate for the benefit of his creditors. I don't think that the trustee should be the one to decide whether a particular debtor should contribute to the estate. In most of the cases, as we know, and this is a very difficult problem we are faced with, in actual practice the trustee is selected by the debtor. The danger then is that the trustee will have a tendency to be lenient to the debtor, and that is why I personally think that one of the solutions is to have the trustee in these cases, where the debtor is earning any income or remuneration, to make an application to the court to have a portion of the debtor's salary or remuneration set aside, and this is the portion that should be made available to the trustee.

Senator PEARSON: Have you any figure as to what the proportion should be?

Mr. TASSÉ: According to this amendment this would be at the discretion of the court, having regard to the family responsibilities and personal situation of the debtor. I think this is more flexible than the arrangement we have now, according to which the portion to be paid has to be, and necessarily has to be, the seizable portion of the salary. In some cases that is too harsh. I think these words that we find at the end of subsection (1) give some flexibility to this.

Senator PEARSON: I mean the proportions as between the trustee and the creditor.

The CHAIRMAN: You mean is there a set formula?

Senator PEARSON: Is there a definite proportion between the two. The court, does it assign so much to the trustee and so much to the creditor?

Mr. TASSÉ: I may misunderstand the point you are making, Senator. The debtor will deposit all his assets, including the portion that may be set, and this is in the hands of the trustee who will have some disbursements and will have his fee set, and the rest is distributed to creditors.

Senator CROLL: I apologize for not being able to be here earlier. I have received the impression that a man is perpetually bankrupt under this section. He can never get out. The act was intended to relieve some people who were foolish and for some reason or other got themselves into trouble, and we are prepared to close our eyes, but under this section does he ever get out?

Mr. TASSÉ: This has nothing to do with the discharge properly speaking.

The CHAIRMAN: Wait a minute, now. Let us be realistic about this.

Senator LEONARD: Why would you give a discharge as long as he is continuing to pay? Would he not continue to pay *ad infinitum*?

Mr. TASSÉ: We may have the same problem today, and there are judges who will give an order to the effect that the debtor should pay so much for so long, and if we look at the discharge provisions I think these will not be affected by Section 39A.

Senator CROLL: If a discharge is given, surely he will not have to pay after that. I don't recall such instances. It is new to me.

Senator FLYNN: What about section 129 (2) (c) of the present act?

Senator CROLL: For our purposes it is dead.

Senator COOK: Are there many cases of a man going bankrupt more than once?

Mr. TASSÉ: There are cases where a person has gone more than once.

Senator COOK: Are there many?

Mr. TASSÉ: I have no figure, and it was never attempted to count them.

Senator CROLL: Senator Flynn and I are having difficulty here. At (c) we have the words

- (c) require the bankrupt, as a condition of his discharge, to perform such acts, pay such moneys, consent to such judgments, or comply with such other terms as the court may direct.

If the court says "Today you shall do so-and-so," and if you do it then you are discharged. Then the man says he will agree to this and so get his discharge. And of course what he has in mind is something that is done as a condition before the discharge is granted.

Senator FLYNN: He can claim a discharge on the condition that for a certain period of time the debtor shall pay a certain part of his earnings.

The CHAIRMAN: What we are dealing with in this section 39A is the position of a person who receives payments during the period when he is a bankrupt.

Senator FLYNN: Not necessarily. The amendment would permit the court to make an order for, say, a period of two years, and he would have to pay.

The CHAIRMAN: The section in the present act deals with the powers of the court, when you are asking for a discharge, and they name those terms. But this is dealing with a situation before there is any question of discharge.

Senator FLYNN: But for that period this is important. The wording says "directing the payment to the trustee of such part of the salary, wages or other remuneration"—

The CHAIRMAN: Yes.

Senator FLYNN: For such time as the court may fix or until payment of a sum specified. The period may extend after the date of discharge.

The CHAIRMAN: Yes, but that is up until the date of discharge unless a later date is fixed.

Senator LEONARD: Might I ask with respect to section 10, the new section 39A, are organizations representing creditors seeking that section?

Mr. TASSÉ: This section has been worked out inside the department.

Senator LEONARD: The witnesses here, what would they say if section 10 were struck out completely?

Senator CROLL: The witnesses would cheer for it.

Mr. GREENBLATT: Not exactly. We from Quebec would not cheer at all because in Quebec we have a very rigid situation where if a trustee proceeds to apply to the court for an attachment of the salary of the bankrupt or debtor, the court has no choice but to order that the deposit or the portion which is seizable and payable to the trustee is the amount provided for by the Civil Code, and that the amount may be seizable under certain circumstances. But, in the section as it is now the court would have discretion in setting the amount, and that would result in a considerable relief in many instances for an honest debtor with a large family who cannot afford to pay a fixed seasonal minimum portion.

The CHAIRMAN: Mr. Biddell, under section 39A you have to rely on the discretion of the court as to what portion of the earnings of the bankrupt for the period of his bankruptcy should be made available to the trustee. That is much better than having a formula, is it not?

Mr. BIDDELL: It is much better than having a formula, but it should not be necessary in every case. In most cases where the trustee and inspectors feel that the debtor should not be required to contribute anything, because of his circumstances, his earnings and his family responsibilities, the trustee should not have to go to the court to confirm this. If the trustee and inspectors feel that the debtor should not be required to contribute anything then we think they should make the initial decision, but they should have the right to go to the court. That is why we say "may" rather than "shall". They should have the right to go to the court if clearly some part of the income should be attached.

If the inspectors, who are the creditors' representatives, agree among themselves that this would be improper and iniquitous in the circumstances then they should not be required to go to the court, because when they go to the court it is mandatory. In every situation there is going to be some disgruntled creditor who will appear and try to persuade the court that some contribution is required. Also, it will clog up the machinery of the courts, and we do not think it will be worth while from the public standpoint.

Senator FLYNN: Mr. Chairman, I think I have an amendment that would include the suggestions of Mr. Greenblatt and Mr. Biddell. I think there is no doubt that this section is a good one, and perhaps we could say first, in order to correct the contradiction in section 39 as it is now, we could say: "notwithstanding section 39 where a bankrupt is in receipt..." I would make it

mandatory for the trustee, but I would say "such part, if any, of the salary", just to clearly indicate to the court that in some cases there may be no part of the salary or wages that should be paid, and the judge would then take the whole situation into consideration. He might also take into consideration the nature of the claims that may be represented at that hearing. For instance, if there is a claim by a finance company which really took a risk in lending money to this debtor then the court might say that in that case no part of the wages or salary would be payable to the trustee. But, on the other hand, if you leave it to the discretion of the trustee who has been in most cases selected by the debtor then, as has been indicated by Mr. Tassé, he will never go. I think if you make it clear that the court may in some circumstances in its discretion issue an order that no part of the wages or salary is payable to the trustee then the point will have been made.

The CHAIRMAN: Mr. Biddell's objection, as I understand it, is if you make it compulsory in every case for the trustee to go to the court and ask the court to state what part, if any, of the earnings shall be paid to the trustee then you are going to have a tremendous number of applications, very few of which will be one in which any order will be made.

Senator FLYNN: All right. That does not matter. I do not think Mr. Biddell expressed real fear about the number of cases.

The CHAIRMAN: I thought he did.

Senator FLYNN: What he said was that some creditors would want to appear and support a demand for part of the salary to be paid to the trustee.

The CHAIRMAN: No, he said that it would clutter up the courts with a lot of applications.

Senator FLYNN: He said that at the end, but I am convinced—

Senator CROLL: When you talk about cluttering up the courts I would point out that there are enough lawyers present from Toronto who can tell you that the bankruptcy courts there are so cluttered that it is a wonder that two or three extra judges are not appointed. I have seen a list of 30 or 40 cases that the judge had dealt with. How could he have dealt with them? How could he have listened to them? He just handed out the orders faster than divorces are handed out.

Senator FLYNN: I agree with you in respect to the number of judges. If you need them to enforce the act—well, one of the troubles we have had is that the act is not enforced properly.

Senator WALKER: Mr. Biddell said that in line 22 the word "shall" should be replaced by the word "may". It would then be obvious that the trustee may apply to the court. Surely that is all that is needed.

Senator FLYNN: But the trustee is appointed by the debtor.

Senator WALKER: We are trying to put teeth into this act. We must not make it too easy. I would object to doing away with section 39A.

The CHAIRMAN: Mr. Tassé has something further to add.

Mr. TASSÉ: I believe our problem can be solved if we add after the word "shall" the words "if directed by the creditors or the inspectors". It would then read "the trustee shall, if directed by the creditors or the inspectors, apply".

Senator LEONARD: That is all right.

Senator FLYNN: Will that meet the objection of Mr. Biddell?

The CHAIRMAN: Is it "the creditors" or "the inspectors"?

Senator LEONARD: "Inspectors", I suppose, is the proper word, is it not?

Mr. GREENBLATT: That is perfectly satisfactory—"if directed by the inspectors or the creditors"—because there might be a general meeting of the creditors which may decide differently from the inspectors.

The CHAIRMAN: The amendment is in line 23 and the words to be added are "if directed by the inspectors or the creditors".

Senator FLYNN: I suggest that you have "Notwithstanding section 39" at the beginning.

Mr. BIDDELL: I think it is necessary to make an amendment to section 39 in order to be consistent, if you are going to accept this suggestion. I think overall we are agreed.

Mr. TASSÉ: Yes, I agree.

The CHAIRMAN: So we will qualify the section by the words "Notwithstanding section 39".

Senator LEONARD: Is that qualification satisfactory?

Mr. BIDDELL: Yes.

Senator LEONARD: Then, what about putting in Senator Flynn's suggestion of "such part, if any, of the salary"?

The CHAIRMAN: No, we are leaving it in the discretion of the court.

Senator FLYNN: We want to make sure that the court may direct there will be no part paid.

The CHAIRMAN: Oh, yes. Have you a note of that, Mr. Hopkins? There are two changes. One is that this section operates notwithstanding section 39, and then after the words in line 22 "shall apply" we add "if directed by the inspectors or the creditors".

Mr. HOPKINS: Might I suggest that those words appear after the word "trustee".

The CHAIRMAN: Yes, I think perhaps that is better. Then it will read "the trustee, if directed by the inspector or creditors". As amended, shall clause 10 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: We come then to clause 11. I do not think we need spend much time on this clause. It simply extends the period in cases of certain types of preferences.

Mr. TASSÉ: That is right, Mr. Chairman.

The CHAIRMAN: I do not think we have any submissions with respect to this clause.

Mr. BIDDELL: No.

The CHAIRMAN: Shall clause 11 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 12. Do we have any submissions with respect to clause 12?

Mr. BIDDELL: It is satisfactory.

Senator FLYNN: I thought it was mentioned that the review could be made by the trustee if accepted—

Mr. BIDDELL: That is in clauses 13 and 14.

Senator FLYNN: Yes.

The CHAIRMAN: Shall clause 12 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Then, we move on to page 12, clause 13. Did we not have some objections there?

Mr. GREENBLATT: Yes. We have already made our representation, Mr. Tassé, so it is your turn to comment now. With respect to related persons having claims they shall be entitled to share in the dividend unless—

Mr. TASSÉ: Are you thinking of clause 13 or clause 14?

Mr. GREENBLATT: Clause 14.

The CHAIRMAN: I am talking about clause 13. You have no further comment on clause 13?

Mr. TASSÉ: No.

The CHAIRMAN: Shall clause 13 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Yes, I remember clause 14. This is where I came in yesterday. What is your comment on clause 14, Mr. Tassé?

Mr. TASSÉ: I think there is some merit in the point that was raised yesterday, and I am wondering whether we could settle this problem by adding, as has been suggested by the chairman, in line 11 after the word "opinion" the words "of the trustee or", so that it will read "was in the opinion of the trustee or of the court".

The CHAIRMAN: Yes, in line 11 on page 13 add after the words "was in the opinion of" the words "the trustee or the court".

Senator CROLL: Yes.

The CHAIRMAN: Is that agreed? Are there any other objections?

Senator FLYNN: Mr. Chairman, yesterday I raised an objection. Supposing a reviewable transaction has been reviewed by the court, as I mentioned yesterday, and the court says that the consideration was too high, and they made the adjustment: the balance, that is, the claim of the creditors to me is an ordinary claim, and I do not see why this claim should be considered only after payment of all the other claims.

Yesterday I gave the example of a payment of \$100 for goods valued at \$1,000. This transaction is reviewed. Therefore, the trustee is entitled to claim a refund of \$900 or the goods, and the other party is left with a claim of \$100. Why should this claim be postponed, especially when the bankrupt has been able to recover the goods?

The CHAIRMAN: If the bankrupt's estate recovers the goods, frankly, I do not see any reason why what I pay for the goods should not rank as an ordinary debt.

Senator FLYNN: That is my point.

Mr. GREENBLATT: There is no question that once it has been reviewed it is no longer a reviewable claim, and therefore he ranks like anybody else.

Senator FLYNN: I cannot see that a reviewable transaction is one which has to be reviewed at one point or another. A decision has to be taken about it. It is not a question mark. When you say "reviewable transaction", do you mean a transaction that has not been passed upon by the court or by the trustee?

The CHAIRMAN: No. A reviewable transaction here is a reviewable transaction as defined by this bill.

Senator FLYNN: I know that.

Senator LEONARD: I think Senator Flynn means that he should be entitled to a claim with respect to his allowed claim but not with respect to the disallowed claim.

Senator FLYNN: That is right.

Senator LEONARD: So that line 9 should now read, "Not entitled to claim a dividend except on any disallowed claim".

The CHAIRMAN: That will not do either.

Senator LEONARD: Or any portion.

The CHAIRMAN: No. If the goods are taken back and he has paid \$100, his claim is \$100, and that is all. He has not anything more.

Senator FLYNN: This should be an ordinary claim.

Senator LEONARD: He starts by claiming \$1,000.

Senator FLYNN: 67A, paragraph (2) of section 12 says:

Where the court in proceedings under this section finds that the consideration given or received by the bankrupt in the reviewable transaction was conspicuously greater or less than the fair market value of the property or services concerned in the transaction, the court may give judgment to the trustee against the other party to the transaction, or against any other person being privy to the transaction with the bankrupt, or against all such persons, for the difference between the actual consideration given or received by the bankrupt and the fair market value, as determined by the court, of the property or services concerned in the transaction.

So once this judgment is rendered, what is left of the claim of the creditor, to me, is an ordinary claim.

The CHAIRMAN: I don't think that is the kind of case that this section is contemplating.

Senator FLYNN: Perhaps not. If one is satisfied that this would not apply to the balance, let us say, of a reviewable transaction, I would agree.

The CHAIRMAN: I think it covers the kind of claim of a creditor who is in a special position which makes the transaction a reviewable transaction and he is asserting a right against that of the estate, and the trustee says, "You were in a special position, and in relation to that claim we are not disallowing your claim, but what we are saying is that you do not get any dividends on it until everybody else is paid". Is that not the fact?

Mr. GREENBLATT: Yes.

Senator FLYNN: I bow.

The CHAIRMAN: There is another suggestion in relation to the last three lines of 96 (1), where the section says:

but this subsection does not apply with respect to a loan of money made to the debtor by the creditor within the two years immediately preceding the bankruptcy.

I puzzled over that, trying to figure what it means and of whatever use it could be. If you loan money, and that is regarded as a proper transaction, and it is outstanding, why does it have to be loaned within two years in order to get a benefit?

Senator CROLL: Let us hear what Mr. Tassé has to say.

Mr. TASSÉ: The purpose, of course, is as follows. We are dealing with related persons and persons who are dealing at armslength. At first, it would appear that they should be in the same position as the other creditors, except that the danger is that this would discourage the related person from loaning money to a debtor to keep him in business. Therefore, there is an exception for

these types of transactions so that it would be possible for a person to loan money to a debtor to permit him to carry on a business, except that if these loans were made two years prior to the bankruptcy then they would be placed in a position whereby the transaction would be deemed to be an investment, so to speak.

The CHAIRMAN: There are two things wrong with that, Mr. Tassé. First of all, if I have loaned money three years before the bankruptcy I can always keep it up to date by going to the person who ultimately becomes bankrupt, he will pay me off, and I can loan him the money again. So that I can always be within the two years.

Secondly, surely somewhere else in this bill we have looked at the kind of transaction whereby in the case of a reviewable transaction the court may decide whether it is a proper transaction or not. To loan money to someone to carry on business is that not a proper transaction, no matter what the relationship might be?

Mr. TASSÉ: We had in mind such cases where the loan is made, for example, at a conspicuously high rate of interest and for the purpose of defeating many of the provisions of the act, and then we would be dealing exactly with a reviewable transaction.

The CHAIRMAN: But surely interest would have to be considered separately from the loan? I do not think the two year period helps there. The exorbitant rate of interest may be a test of the *bona fides*. However, what we say is that if you loan the money within two years then no matter what the interest may be, it is all right?

Mr. TASSÉ: Yes.

The CHAIRMAN: I would not go for that, Mr. Tassé. I think an exorbitant rate of interest at any time can be questioned under the provisions of the Bankruptcy Act if the parties are in a relationship of that kind. I do not see the need for the two year limit at all. Are you afraid that you will lose something if we take it out—some authority, some power?

Mr. TASSÉ: Not at all. This was put in because we thought this would help certain of the debtors to obtain loans which could be covered by the first part of the section. That is what we had in mind. I think this was a suggestion that was made by the Institute of Chartered Accountants.

Mr. BIDDLE: We were greatly concerned that there should be nothing to inhibit persons from making loans to keep businesses alive during perhaps a critical period. We see no purpose in the two year limitation at all, first, because there is no purpose, and secondly, any sophisticated lender can just roll the thing over after the two-year period and keep the thing alive. We do not think the two-year limit makes any difference.

So far as loaning itself is concerned, we do not think the loaning of money in cash or dollars is or ever should be upset by the court wherever it comes up. I can agree that interest would be subject to review. We do not think for a moment these three lines should be in the bill.

Senator CROLL: I move that they be struck out.

The CHAIRMAN: Are you agreed that the three lines in subsection (1) of 96, being part of paragraph 14, shall be deleted?

Senator LEONARD: So that I shall understand, before that is done, does this loan still become a reviewable transaction?

The CHAIRMAN: Yes.

Senator LEONARD: This loan of money is still a reviewable transaction?

The CHAIRMAN: Yes.

Senator LEONARD: Therefore the loan of money will come under the first part of section 96?

The CHAIRMAN: Yes.

Senator LEONARD: And therefore it will have to wait until the claims of other creditors have been dealt with? Is that what the committee desires?

Senator HUGESSEN: Always subject to the qualification that it is a transaction which, in the opinion of the court—

The CHAIRMAN: The overriding point there is, unless in the opinion of the court it is a proper transaction.

Senator FLYNN: I suggest that we could pass this section, but I recommend to Mr. Tassé to discuss it in the Department of Justice. It seems to me that there is something wrong there.

The CHAIRMAN: There is a motion to strike out those three lines.

Senator FLYNN: You can do that, but I would like Mr. Tassé to review it.

The CHAIRMAN: We can come back to it later, as we are not going to finish the bill today. Mr. Tassé will have time to review it. In the meantime, the view of the committee is that these three lines be struck out?

Hon. SENATORS: Agreed.

The CHAIRMAN: On section 15, summary administration, I might have some ideas, except that the Senate voted for it in 1962 and 1963. That does not mean that one is locked into one's opinion for all time. If I vote against it now, I would have to change my opinion before the thing had been tried out. I think there were some suggestions.

Mr. TASSÉ: There were some suggestions yesterday that it should be repealed.

The CHAIRMAN: I thought so. There were some representations here that we should strike out the summary administration provisions entirely. We heard a lot of evidence on this bill and some of those with certain opinions earlier have recanted their views and now think that these provisions should be struck out.

Senator LEONARD: This affects only the provinces that decide they want to have it?

The CHAIRMAN: No, no.

Senator LEONARD: I am sorry.

Senator CROLL: This is the quickie.

The CHAIRMAN: Yes.

Senator CROLL: We need it. This is the poor man's bankruptcy.

The CHAIRMAN: Yes.

Senator CROLL: We have discussed this many times in the past and those people particularly in the rural areas felt this was essential, to get to the clerk of the court and do what they had to do.

The CHAIRMAN: We have taken some of the abuses out of it. You recall the main abuse was that the trustee in summary administration would send out a notice of the first meeting of creditors and he would include with the notice of that meeting a notice of the application for discharge of the bankrupt. We thought that was, you might say, too much of a quickie.

Senator HUGESSEN: Are the present representatives satisfied with this?

The CHAIRMAN: Have you any comment, Mr. Biddell?

Mr. BIDEELL: Honourable senators, we think that the summary administration provisions have been so reduced, with the consent of everyone, that what is left is not worth keeping. All that remains at the present time is that one can send out notices by ordinary mail instead of by registered mail, which means a saving of 25 cents; but there are usually very few creditors, so the saving is insignificant. All that remains then is that one can send an application for discharge in the first mail. Again, that is not important. Really, all it does is rile the creditors when they see that.

The CHAIRMAN: I know that.

Mr. BIDEELL: They first think they are not going to get paid, and then they see an application for discharge. It really upsets them.

The CHAIRMAN: They are letting him free again.

Mr. BIDEELL: We do not think enough is left in summary administration to make it worthwhile. This has a bearing also on what we were speaking about a few minutes ago. If we have summary administration, we will have a continuation of the situation where we probably do not have inspectors and then it is left to the discretion of the trustee whether or not he will apply for an order to get some part of the post bankruptcy income. We would rather see the creditors advise and instruct the trustee as to whether he should go after some of that income. Looking at section 39A in relation to this, and having in mind there is so little summary administration left, it is not worthwhile retaining it. I speak for the Toronto Board of Trade in that connection. They were partially responsible for summary administration being retained.

Senator CROLL: That gives me an opportunity not to agree with the Toronto Board of Trade—with which I have been agreeing too often. As I recall, on going through this, it was not the Toronto bodies who wanted the summary administration provisions in, but the people from—

The CHAIRMAN: Montreal.

Senator CROLL: And the Maritimes. I remember that Senator Kinley and some senator from the west thought that this would work well in their provinces. If it does no harm, we ought to give them an opportunity to use it. I do not want the legislation to be so buttoned up that there are no loose buttons at all.

The CHAIRMAN: Shall section 15 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now, section 16. We had some comments on this yesterday ranging from its complete uselessness to other complaints. Have you any summary statement you want to make, Mr. Biddell or Mr. Greenblatt?

Mr. GREENBLATT: We made our statement yesterday and we want to hear what Mr. Tassé has to say.

Mr. TASSÉ: I think that the danger that was alluded to yesterday was that there was a possibility that the Superintendent's office would pass the buck to the official receiver. I think so far as I am concerned there is no such danger, but I think these two subsections of section 3 would be very useful if we keep the following background in mind.

The provincial authorities have some responsibility in this field so far as frauds and other offences under the Criminal Code are concerned. Now the official receiver is usually an employee of the provincial court and it happens that in some cases the official receiver is working in close relationship with provincial authorities. If the official receiver has certain powers to make certain

investigations this could very much help the provincial authorities who are making investigations in that field. Now so far as I am concerned or so far as the Superintendent is concerned these powers given to the official receiver could also be very useful, and if he is requested to make an investigation his expenses would be paid out of the moneys allocated to the office.

The CHAIRMAN: I think the situation on that may fairly be said to be that it is something that cannot do very much harm and it may have some good purpose.

Senator WALKER: Mr. Chairman, the duties of the Superintendent are so greatly increased by these amendments that some way should be found of delegating what has to be done by the official receiver. I think this should pass.

The CHAIRMAN: Shall section 16 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 17; have you any comment on that?

Mr. TASSÉ: In respect to clause 17 it was suggested that after the word "discharge" the following words be added so that the section would read as follows: "A corporation may not apply for discharge unless it has satisfied the claims of its creditors in full." That was suggested by Mr. Houlden yesterday. That is quite acceptable to me.

Senator FLYNN: I don't think it is necessary.

The CHAIRMAN: Does the section as amended carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now we come to section 18. There are some points made here about this section. I think Mr. Biddell had a few things to suggest. The first was with relation to paragraph (a) at the bottom of the page. Would you answer them? This will be the last one we will do.

Mr. TASSÉ: I think that the most important suggestion made by Mr. Biddell in respect to this provision is that the report of the official receiver should include information contained in subparagraphs (b) and (c) of section 1 of 128A.

Senator CROLL: I think we are going to get into some discussion on this one and I would suggest that we should finish now for the time being.

The CHAIRMAN: I think I must commend you, you have worked very well. The committee will rise now and you will have due notice of the next meeting.

The committee adjourned.



First Session—Twenty-seventh Parliament

1966

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable David A. CROLL, *Acting Chairman*

No. 6

Complete Proceedings on Bill S-23,
intituled: "An Act to amend the Export and Import Permits Act".

WEDNESDAY, MARCH 30th, 1966

WITNESS:

Department of Trade and Commerce: G. M. Schuthe,
Director, Transportation and Trade Services.

REPORT OF THE COMMITTEE

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Hugessen	Reid
Blois	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Queens-</i>
Choquette	Kinley	<i>Shelburne</i>)
Cook	Lang	Taylor
Crerar	Leonard	Thorvaldson
Croll	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Davis	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McKeen	White
Fergusson	McLean	Willis—(49).
Flynn	Molson	

Ex officio members: Brooks and Connolly (*Ottawa West*).
(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, March 29, 1966.

“Pursuant to the Order of the Day, the Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Kinley that the Bill S-23, intituled: “An Act to amend the Export and Import Permits Act”, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Croll, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 30, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Croll (*Acting Chairman*), Baird, Beaubien (*Provencher*), Brooks, Burchill, Connolly (*Ottawa West*), Cook, Flynn, Gélinas, Haig, Irvine, Isnor, Kinley, Leonard, Pearson, Pouliot, Roebuck, Smith (*Queens-Shelburne*), Thorvaldson and Walker.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

In the absence of the Chairman and on Motion of the Honourable Senator Beaubien (*Provencher*), the Honourable Senator Croll was elected Acting Chairman.

On Motion of the Honourable Senator Haig it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the Proceedings of the Committee on Bill S-23.

Bill S-23, "An Act to amend the Export and Import Permits Act", was read and examined.

The following witness was heard:

Department of Trade and Commerce: G. M. Schuthe, Director, Transportation and Trade Services.

On Motion of the Honourable Senator Walker it was *Resolved* to report the said Bill without amendment.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, 30th March, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-23, intituled: "An Act to amend the Export and Import Permits Act", has in obedience to the order of reference of 29th March, 1966, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

DAVID A. CROLL,
Acting Chairman.

THE SENATE
THE STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Wednesday, March 30, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill S-23, to amend the Export and Import Permits Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator David A. Croll (*Acting Chairman*) in the Chair.

The ACTING CHAIRMAN: Honourable senators, we have before us Bill S-23, to which Senator Benidickson spoke yesterday in the house and gave quite an interesting and extensive explanation indeed. The bill contains very few words.

Our witnesses are Mr. G. M. Schuthe, Director of Transportation and Trade Services, Department of Trade and Commerce, and he is accompanied by Mr. G. Ferguson, Assistant Director, Transportation and Trade Services.

The committee agreed that a verbatim report be made of the committee proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The ACTING CHAIRMAN: In the house yesterday both Senator Benidickson and Senator Brooks discussed the question of imports from Rhodesia. You might tell us something about that, Mr. Schuthe.

G. M. Schuthe, Director, Transportation and Trade Services, Department of Trade and Commerce: The Export and Import Permits Act at the present time provides authority for controlling imports of all goods of Rhodesian origin. Under the existing policy of the Canadian Government no permits are being issued for goods of Rhodesian origin, consideration being given only to shipments that may have been in transit to Canada from Rhodesia.

Senator THORVALDSON: Before the witness continues to deal specifically with Rhodesia, may I ask him one or two general questions. First, is the Export and Import Permits Act a statute which empowers the Government to deal with all matters of exports and imports without reference to Parliament?

Mr. SCHUTHE: There are certain purposes outlined in the Act, sir, for which controls may be established by Governor in Council, and provided the purposes are met the Governor in Council may put controls on those commodities or controls on exports to those areas that are included in the control lists.

Senator THORVALDSON: Supposing the Export and Import Permits Act was not in existence, would the Government then have been able to apply sanctions or controls on trade with Rhodesia without an Act of Parliament? In other words, is this the Act which enables a government to act in regard to a country like Rhodesia as has been done without parliamentary sanction?

Mr. SCHUTHE: In this case there was an interparliamentary arrangement which made it possible to impose the control on trade with Rhodesia. If there had not been that arrangement this Act could not have been used for that purpose.

Senator THORVALDSON: What do you mean by "interparliamentary arrangement"?

Mr. SCHUTHE: There was an exchange of Notes between Canada and Britain which provided the arrangement under which control could be imposed.

Senator THORVALDSON: Is it possible for the Canadian Government to apply control to trade, entirely apart from this Act, even as you say by arrangement? Under what legislative power can there be such an exchange of Notes that can be effective to change the course of trade or create embargoes such as have been done?

Mr. SCHUTHE: I might refer to sections 3 and 5 of the Act. Under section 3 the Governor in Council may establish a list of goods, which is known as the Export Control List, for the purpose of controlling their export in the case that we may be interested to implement an intergovernmental arrangement or commitment. Under section 5, referring to the Import Control List, the list may be established for the purpose of implementing the intergovernmental arrangement or commitment. This does provide the authority for the Governor in Council to impose those controls. My experience of all legislation is limited. This is possible, I know, under the Export and Import Permits Act. I suspect that under the Customs Act there may be some provisions, but my experience beyond that is decidedly limited.

Senator THORVALDSON: I think you have answered my question very well. It was merely a point of information, and I should have known that myself. I should have checked the Act for it. All I wished to know was the basis of these controls. You have answered it now. I can see that they are controlled under sections 3 and 5 of the Act.

Senator BROOKS: Would it not be a fact that, besides the Export and Import Permits Act, Great Britain for instance would declare she was imposing sanctions against Rhodesia. In that case there would have to be an agreement between the countries and Great Britain which would prevent oil, for instance, and gasoline—which is not exported from Canada as a rule—from getting into those countries. The agreement has to do more with the sanctions than with export and import control?

Mr. SCHUTHE: I think you have stated it correctly, sir.

The CHAIRMAN: Will you answer now the question which Senator Brooks asked yesterday in the house, and about which I spoke to you. He wants to know what business we were doing with Rhodesia by way of imports and exports.

Mr. SCHUTHE: Yes, sir. Trade with Rhodesia has, of course, come virtually to a stop as a result of the imposition of the present controls. In the year prior to the controls, our trade would have amounted to something like \$8 million in exports and imports—slightly more in imports than exports. At the present time, of course, the trade has virtually ceased. There is provision for the export of essential food stuffs, medical supplies, where they are needed; but essentially the amount of trade between Canada and Rhodesia at the present time is almost negligible.

Senator BROOKS: What were we purchasing mostly from Rhodesia?

Mr. SCHUTHE: We were purchasing tobacco, chrome, ferro-chrome, some asbestos, meats, and a variety of less significant commodities.

Senator KINLEY: What did we sell to Rhodesia?

Mr. SCHUTHE: We sold wheat, forest products, automobile parts, and a wide range of other goods in small volume.

Senator THORVALDSON: When you referred to medical supplies, you were referring not to imports from Rhodesia but to Canadian exports to Rhodesia?

You said something about medical supplies and I wonder if you would explain what you mean.

Mr. SCHUTHE: Yes, sir. There is a provision made in the statement of Canadian policy that consideration would be given to foods, medical supplies, some equipment that might be needed for the transportation, the power system of Rhodesia, specifically the Central African Airways, the Central African Power Corporation, and Rhodesian railways. This refers to exports, sir.

Senator THORVALDSON: Do we understand, therefore, that the embargo by Canada on exports is not absolute; in other words, we are selling certain goods to Rhodesia at the present time?

Mr. SCHUTHE: Only in those categories. There is provision for consideration to be given to permit applications for foods, medical supplies and those other items I have referred to.

Senator THORVALDSON: When you say "only in those categories," it does not mean very much without knowing the percentage of trade that we do in those categories. I am not suggesting you ought to have that figure at your fingertips. I wonder if there is any way of knowing what the percentage of our exports would be.

Mr. SCHUTHE: I would say it is almost insignificant, sir. It is a very small figure.

Senator KINLEY: What about agricultural machinery used in connection with the production of food? Do we prohibit the export of agricultural machinery?

Mr. SCHUTHE: I would understand that the export of agricultural machinery is at present being prohibited.

Senator BURCHILL: Even to export medicine and food and that sort of thing, one would have to get a permit?

Mr. SCHUTHE: You would need a permit, yes.

The CHAIRMAN: I understand that Britain is permitting the export of food and medicine, and that was in the original announcement, as I recall it. We are doing so, too, if there are applications for it.

Senator BROOKS: That is the usual thing.

The CHAIRMAN: Yes. There is no attempt going made to starve them into submission.

Senator BROOKS: That is true of Cuba and Korea and such other countries.

Senator ROEBUCK: Have you a list of the countries to whom we have applied the Export and Import Permits Act?

Mr. SCHUTHE: The list of countries to which all exports from Canada are subject to permit control is as follows: Albania, Bulgaria, China, including Manchuria but excluding Taiwan (Formosa), Czechoslovakia, Estonia, Germany (Soviet zone only), Hungary, Latvia, Lithuania, Mongolia, North Korea, North Vietnam, Poland, Rumania, Sinkiang, Tibet, Union of Soviet Socialist Republics, Rhodesia. This is a list of countries to which all exports from Canada require export permits. It is not in itself an embargo.

Senator ROEBUCK: Other than China, they are all behind the Iron Curtain?

Mr. SCHUTHE: Other than Rhodesia, sir.

The CHAIRMAN: Only Red China is included. Taiwan is not.

Senator KINLEY: Did you mention Cuba?

Mr. SCHUTHE: No, sir.

Senator THORVALDSON: Can you give us any information whether the trade import and export controls as against Rhodesia are more stringent or restrictive than, say, our controls in regard to Cuba?

Mr. SCHUTHE: The controls on trade with Rhodesia are more stringent in that there is in effect an embargo, with very limited exceptions.

Senator THORVALDSON: I take it that Rhodesia is the only country in the world, apart from the Iron Curtain countries and Cuba, to which this Act applies now?

Senator BROOKS: The Act does not apply to Cuba.

Senator THORVALDSON: Does it not apply to Cuba?

Mr. SCHUTHE: I am not sure that I understand the question.

Senator THORVALDSON: Rhodesia is now the only country in the world to which the Act applies, apart from countries behind the Iron Curtain, including China?

Mr. SCHUTHE: I would say—to which the Government policy of embargo applies. The Act does apply, of course, to virtually all countries with which we trade.

Senator KINLEY: Can you say if these permitted exports are covered by insurance? Can they get it for these permitted exports? If you have to get a special permit, will you get insurance coverage?

Mr. SCHUTHE: I do not think I am able to answer that question. I do not know what policy the insurance people would take.

Senator KINLEY: You know that the Government insures our foreign exports.

Mr. SCHUTHE: Yes.

Senator ISNOR: I wonder if the witness could throw a little light on a matter I had reference to through correspondence with the department a short time ago. Before asking my question, I should like to join with you, Mr. Chairman, in saying that the sponsor of the bill, Senator Benidickson, certainly explained the bill very fully. I think his remarks centred largely on the export end of it. I am interested in imports because of trade relations with various countries and the effect it might have on our own manufacturers. I have particularly in mind one item, and that is fur felt used in the manufacture of hats. Our imports are from Red China and I think from Japan as well. I wonder if the witness could tell us as to the quantity of fur felt we import for use in the manufacture of hats. I ask that because it has had a very serious effect on one of our manufacturers in Nova Scotia. In fact they have been forced to close their factory because of the importation of fur felts from Red China.

Mr. SCHUTHE: I was looking through the list of imports from Communist China in the hope that that figure would become fairly readily apparent. It is included. I will be happy to scan this to see what the figure is. However, I would say that perhaps your question is one I am not qualified to answer in that I do not know the commodity with respect to its trading characteristics. I can say, sir, that it is not presently under import control. It is not on the import control list which in fact includes only five items plus all goods of Rhodesian origin.

Senator ISNOR: It may not be on the list, but the fact remains that they are importing fur felts from Red China into Canada and it is affecting our manufacturing business so far as hats are concerned.

Senator KINLEY: Is it imported through Hong Kong?

Senator ISNOR: I suppose it would be natural for imports from Red China to come through Hong Kong.

Senator BROOKS: We have a very large balance of trade against China because of their huge purchases of our wheat. We certainly should buy something from them.

Mr. SCHUTHE: The item is not presently under import control and I am not familiar with it. However, I could get the answer.

Senator ISNOR: Perhaps I can get the answer from the department. That will satisfy me.

The ACTING CHAIRMAN: Can you get that answer for Senator Isnor?

Mr. SCHUTHE: I will get the answer.

The ACTING CHAIRMAN: Senator Pouliot.

Senator POULIOT: As I understand it, in terms of import and export, the Canadian Government is somewhat the clearing house of importers and exporters. Is that so?

Mr. SCHUTHE: As I understand your question, sir, the Department of Trade and Commerce certainly tries to fill the role of assisting exporters and importers, particularly exporters.

Senator POULIOT: The purpose is to facilitate exports and imports.

Mr. SCHUTHE: The primary purpose of the Act is, I would say, to ensure that arms, ammunition, implements, war strategic goods, and goods that generally fall into this category of strategic goods are not made available in countries where their use could be detrimental to the security of Canada. Another reason is to implement an intergovernmental commitment or arrangement and to ensure there is an adequate distribution and supply of goods or articles in Canada for defence or other needs. In this sense this Act is not a trade promotional one, although in the administration of the Act we do not lose sight of the fact that we are interested in trade promotion.

Senator POULIOT: But what you say about strategic goods is an exception. With the exception of strategic goods the Act applies to all goods that could be imported or exported. Are there restrictions besides those on strategic goods?

Mr. SCHUTHE: There are restrictions on the export of certain goods where there has developed an inadequate supply or unsatisfactory distribution in Canada for defence or economic purposes. This is a very small list. The bulk of the list consists of goods which have strategic significance.

Senator POULIOT: You say there is a small number of exceptions?

Mr. SCHUTHE: There is a very small number of goods under control for reasons other than strategic reasons.

Senator POULIOT: If you will permit me, I want to ask how it works. Say a man is an exporter and he sells lumber to any country in Europe or Africa, and he cannot get payment for his sale at once. Therefore you finance him until he gets paid by the purchaser. Is it the policy with regard to exports—

Mr. SCHUTHE: You mentioned lumber. This happens to be an item that is not subject to control in any way, and is not shown on the list. There is no control on the export of any lumber to any Western country or to Japan. Such exports do not come under export controls.

Senator POULIOT: What are the goods that come under export and import control?

Mr. SCHUTHE: Well, for instance, there is pancreas glands of cattle or calves. The purpose of this control is to make sure that there is an adequate supply of these for the provision of adequate supplies of insulin in Canada. Pork and pork products are subject to control. The reason for that is that the United States would apply a countervailing duty if we did not apply controls in Canada. We have a generous control in this, and supplies of pork can move with

a minimum of red tape. We have pulpwood under control to ensure our pulp and paper industry has an adequate supply of the wood.

Senator SMITH (*Queens-Shelburne*): Do we have control so far as pulpwood is concerned?

Mr. SCHUTHE: Pulpwood is under control.

Senator SMITH (*Queens-Shelburne*): Any pulpwood which is exported can only be exported with a permit from the department?

Mr. SCHUTHE: Yes.

The ACTING CHAIRMAN: Any further questions?

Senator THORVALDSON: When was the original Act passed by Parliament?

Mr. SCHUTHE: The original Act with which we are concerned was passed in 1954 and was assented to on 31st March 1954. It has been extended at three-year intervals since then.

Senator BROOKS: You were speaking about different commodities. That of course may change from time to time. There is no fixed list. A commodity may be on the list now and may be removed at a later date?

Mr. SCHUTHE: The lists may be amended by the Governor in Council.

Senator HAIG: Why is this for a three-year period?

Mr. SCHUTHE: Here I think I must resort to some extent to opinion. I might say that I think the controls are regarded as being transitory in nature. For that reason a three-year period seems to be a convenient term for review.

The ACTING CHAIRMAN: Shall I report the bill?

Senator WALKER: I so move.

Senator POULIOT: Just a moment, I want to ask questions about export and I would also like to have information about imports. I do not want to take too much time.

The ACTING CHAIRMAN: Ask any questions you want to ask.

Senator POULIOT: But I want to understand the whole business. Now suppose that Paul is an importer and he buys goods from any other country, what help do you give him? Do you finance him to sell to the other country? How does it work?

Mr. SCHUTHE: Well, sir, I think this is a question that lies outside the bounds of the Act. We are now talking generally about trade promotion.

Senator POULIOT: I know that, but besides the Act itself have you any regulations for the application of the Act, some departmental regulation for the application of the Act?

Mr. SCHUTHE: There are regulations that deal with export permits and regulations that deal with import permits: that is, the export permit regulations and the import permit regulations. They essentially cover the requirements for obtaining an export or import permit.

Senator POULIOT: I have another question to ask you, Mr. Schuthe. I want to know if this policy of import-export has replaced for a certain type the policy of grants to various nations of the world?

Mr. SCHUTHE: I do not think there is any relationship, sir, between the two.

Senator POULIOT: You know that before that, Mr. Schuthe, gifts were made of certain commodities or sums of money to other countries and Canada did not ask anything in return; but in this case the purpose of the import-export is to promote trade, isn't it?

Mr. SCHUTHE: Indeed, sir, yes.

Senator POULIOT: And it is to promote normal trade between Canada and other countries of the world, both for imports and exports?

Mr. SCHUTHE: May I say, sir, that export and import controls are certainly a restriction on trade, but these restrictions are applied for specific purposes, and when they are applied we in Trade and Commerce are naturally anxious to see the restrictions are at a minimum.

Senator POULIOT: What the department has in view is to maintain the normalcy of internal trade, so that the exports and imports will not affect the normalcy of the internal trade, is that right?

Mr. SCHUTHE: I think you are quite right, sir, with respect to those items which are under control for supply and distribution purposes in Canada. That is, if goods are syphoned off in the export trade and therefore create a serious problem of supply and distribution in Canada, serious consideration can be given under the provisions of this Act to provide control that will make a greater quantity available in Canada or improve the distribution in Canada.

Senator POULIOT: So that Canadian citizens who live in Canada will not suffer by excessive imports or exports?

Mr. SCHUTHE: This is right within the bounds of the purposes for which the Act is intended.

Senator POULIOT: Thank you, Mr. Schuthe. I think your legislation is accomplishing a lot of good for the Canadian people, and I wanted you to establish it before this committee. The committee's proceedings will be printed and other people will better understand the usefulness of this legislation.

Senator RATTENBURY: On the matter of the export of pulpwood, do the federal regulations take precedence over the provincial ones, or the other way around?

Mr. SCHUTHE: I would say the federal regulations apply to the export.

Senator RATTENBURY: This is what I am referring to.

Mr. SCHUTHE: Yes, to that extent.

Senator RATTENBURY: But if the province said, "No"—as was discussed a few years ago in the province of Quebec for example—"we are not going to export any pulpwood and it all has to be processed within our own province," would that be binding?

Mr. SCHUTHE: Certainly, if no application is received for an export permit by the federal Government, no consideration is given to its issuance.

Senator THORVALDSON: Mr. Chairman, I think we ought to have the Supreme Court of Canada decide this question.

The ACTING CHAIRMAN: That might be a good idea.

I have a motion to report the bill without amendment. All those in favour? Contrary?

Carried.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 7

Third Proceedings on Bill S-17
intituled: "An Act to amend the Bankruptcy Act".

WEDNESDAY, MAY 4th, 1966

WITNESSES:

Department of Justice: Roger Tassé, Superintendent of Bankruptcy; The Canadian Bar Association; The Canadian Institute of Chartered Accountants; The Board of Trade of Metropolitan Toronto and The Board of Trade of Montreal; all represented by the following: J. L. Biddell, F.C.A., Toronto; Michael Greenblatt, Q.C., Montreal; Debtors' Assistance Board of Alberta: Philippe J. Gibeau, Chairman.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	O'Leary (<i>Carleton</i>)
Aseltine	Gouin	Paterson
Baird	Haig	Pearson
Beaubien (<i>Bedford</i>)	Hayden	Pouliot
Beaubien (<i>Provencher</i>)	Hugessen	Power
Benidickson	Irvine	Reid
Blois	Isnor	Roebuck
Burchill	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Lang	Taylor
Cook	Leonard	Thorvaldson
Crerar	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Croll	Macdonald (<i>Brantford</i>)	Vien
Davis	McCutcheon	Walker
Dessureault	McKeen	White
Ferris	McLean	Willis—(49)
Fergusson	Molson	
Flynn		
Gélinas		

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 9, 1966.

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Power, P.C., for the second reading of the Bill S-17, intituled: “An Act to amend the Bankruptcy Act”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

J. F. MacNEILL.
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY May 4th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10:30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Baird, Blois, Burchill, Cook, Flynn, Gélinas, Gershaw, Irvine, Isnor, Kinley, Leonard, McCutcheon, Paterson, Pouliot, Taylor, Thorvaldson and Willis. (20)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill S-17, "An Act to amend the Bankruptcy Act", was further considered.

The following witnesses were heard:

Department of Justice: Roger Tassé, Superintendent of Bankruptcy; *Toronto Board of Trade:* J. L. Biddell, F.C.A.; *The Debtors' Assistance Board, Alta.:* Philippe J. Gibeau, Chairman.

At 12:30 p.m. the Committee adjourned until 2:00 p.m. this day.

At 2:00 p.m. the Committee resumed consideration of the above Bill.

The above witnesses were again heard.

On Motion of the Honourable Senator Vien it was agreed that a suggested amendment to clause 3 be drafted by Mr. Hopkins in collaboration with the Department.

At 2:50 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, May 4, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill S-17, to amend the Bankruptcy Act, met this day at 10.30 a.m. to give further consideration to the bill.

Senator **SALTER A. HAYDEN** in the Chair.

The **CHAIRMAN**: Gentlemen, the committee will resume. In our consideration of Bill S-17, we have gone as far as section 18. That is the first section we will deal with today. There were certain sections which in our earlier consideration we stood, but I thought we would come back to them after we have gone the whole way through the bill.

Mr. Tassé, would you just summarize very briefly what section 18 does? This is an additional feature of the bill in connection with the kind of report the trustee will make?

Mr. Roger Tassé, Superintendent of Bankruptcy: That is correct, Mr. Chairman. Clause 18, which will add a new section, section 128A, to the Bankruptcy Act, has two purposes. The first one is to provide the Official Receiver with a report prepared by the trustee giving the name of the debtor and, when the debtor is a corporation, the names of the directors and officers of the corporation and the names of the persons who are responsible for the day-to-day operation of the corporation. This information, which will be included in the report prepared by the trustee and filed with the Official Receiver, will be made available to the public so that it will be possible for the creditors to get access to this information. It will be possible for them to see whether there are any patterns in the activities of certain persons. For example, if it is found that Mr. So-and-So has been a bankrupt himself, has been a director of a number of companies that went bankrupt, and has also been responsible for the day-to-day operation of another company that went bankrupt. This information will be available to the creditors and they will be in a better position to judge whether they should grant credit to that person.

The second purpose of this section is to provide the Superintendent with a report which will be prepared by the trustee containing the information that we have just seen will be given to the official receiver plus other information which is found on page 15 of the bill, in paragraphs (b) (c) (d). These paragraphs provide that the trustee in his report will give his opinion as to whether the deficiency between the assets and the liabilities of the debtor have been satisfactorily accounted for. The trustee will also give his opinion as to the probable causes of the bankruptcy, and he will set out one or more of the probable causes that are specified in paragraph (c)—that is, whether the bankruptcy was caused by misfortune, inexperience, incompetence, fraud, and so on. Finally, he will give the facts and the information upon which he has arrived at this opinion.

This information will be most valuable to the office of the Superintendent in assessing whether there should be an investigation into the affairs of the bankrupt.

It has been suggested by Mr. Biddell that the information contemplated by paragraphs (b), (c) and (d), or, at least, paragraphs (b) and (c), should be made available to the official receiver and accessible to the public. I think that this would be a very dangerous step. It would have one or other of the following effects: The trustees, if they know that their opinion is to be published, would refrain from giving their opinion so that the office of the Superintendent will not have the benefit of this information, or the trustees will give their opinion and then will have to face trials and court actions designed to prevent the publication of the information contained in the report prepared by the trustees. So, in my opinion, the information contained in paragraphs (b), (c), and (d) should be restricted, and should be given only to the superintendent for the purposes I have just mentioned.

The CHAIRMAN: Mr. Tassé, let us stop right there and look at paragraph (b) on page 15. What the trustee is supposed to report on, according to paragraph (b) on page 15, is whether in his opinion the deficiency between the assets and the liabilities of the debtor has been satisfactorily accounted for. Now, that information would be factual. He then has to say, if that is not the case, whether there is evidence of a substantial disappearance of property that is not accounted for. I would think that that would be a factual matter too.

What is it that we are trying to protect, and to what extent are we trying to protect it? Do you mean that the trustee would be afraid to make a statement as to whether or not there is a deficiency and, if so, that property has disappeared that he is unable to account for. Are you saying that if that information was going to be made public he would be afraid to make that statement?

Mr. TASSÉ: I think that the key words then are "satisfactorily accounted for". I think in many cases there is room for a difference of opinion. What we have to avoid here are trials on the issue of whether the assets were satisfactorily accounted for. If property has not been satisfactorily accounted for then that should be brought to the attention of the authorities who will investigate the matter, and then it will be brought before the courts if there is sufficient evidence of an offence, and the matter will be decided by the courts. The decision of the court will be of public record.

The CHAIRMAN: Are you suggesting here that the trustee, if he finds that some property is not available and that its non-availability has not been satisfactorily accounted for, has not some duty in that regard himself?

Mr. TASSÉ: Yes, the trustee has some duty, but we have seen in some cases that the trustee would need some financial assistance which is not always available to him. In these cases, the public authorities should come in and make an investigation.

The CHAIRMAN: What the trustee would do in those circumstances would be to go to the public authorities—the crown attorney's office or the Attorney General's office in the province—and make a report to the Superintendent of Bankruptcy.

Mr. TASSÉ: That is right.

The CHAIRMAN: Because it may then be in the realm of determining whether or not there has been an offence against the act.

Mr. TASSÉ: That is right.

The CHAIRMAN: But what is wrong with having that information made public information?

Mr. TASSÉ: Well, at that stage, in my view, it should remain confidential. In other words, we only have suspicions that there may have been an offence committed, and I think we should not publish that information. This information should be available to the parties that are interested in the enforcement of

the act without giving warning to the person that we may have found something and that we may make an investigation.

Senator THORVALDSON: I take it that this is the view of the persons who drafted this bill. They have taken the view that you have now expressed, that the information should go only to the Superintendent?

Mr. TASSÉ: That is correct.

Senator THORVALDSON: When I referred to "public authorities" a while ago whom were you referring to?

Mr. TASSÉ: To the office of the Superintendent of Bankruptcy.

Senator THORVALDSON: Just to the office of the Superintendent?

Mr. TASSÉ: Yes.

Senator THORVALDSON: You did not have reference to the prosecuting authorities of the province?

The CHAIRMAN: No, the section does not contemplate this information going to those charged with the enforcement of the criminal law in the province. This is simply a report to the Superintendent of Bankruptcy, and why it should be so limited I do not know.

Senator THORVALDSON: That is my point too. I agree with you, Mr. Chairman, that this committee should consider whether this is not something that is too restrictive. I see nothing wrong with having a copy of this report going to the Department of the Attorney General in the province in which the suggested offence was committed.

The CHAIRMAN: There is nothing in this section which prohibits the doing of that, but if the section does not authorize it you are not giving as much protection to the trustee as you should.

Senator THORVALDSON: That is right.

Mr. TASSÉ: You see, under the scheme that is provided for in clause 18 the trustee will make a report to the Superintendent of Bankruptcy giving his opinion as to whether there were any irregularities. Under section 3A the Superintendent will assess the situation and he may make an investigation. Section 3B provides that the Superintendent shall make a report to the provincial authorities if he uncovers any evidence that there was an offence or an irregularity. So, this will be brought to the attention of the provincial authorities—the provincial Crown Attorneys—at a later stage when there is evidence at that time. But, at this stage of the preparation of the report by the trustee under S. 128A, we are thinking only of suspicions, and we are thinking of the results of a preliminary examination by the trustee.

The CHAIRMAN: Mr. Tassé, when I look at paragraph (a) I see what the trustee reports to the Superintendent and which becomes public, and then I look at (b) and see what the trustee must report to the Superintendent but which does not become public. If the trustee is going out on a limb, as you suggest, and exposing himself to something or other you are giving him a lot of leeway in (a) because you are asking him to report—and this will become public property—the names of the persons who in his opinion actively control the day-to-day operations or the business of the debtor or those who, in the opinion of the trustee, were responsible for the greater proportion of the debtor's liabilities, or under whose directions, in the opinion of the trustee, the greater proportion of the debtor's liabilities were incurred. Now, you are well on the way to an analysis of the estate when you make that public, and at that stage a deficiency, if any, would appear—and we must assume a deficiency or there would not be a bankruptcy.

Mr. TASSÉ: Yes. It is a question of whether this deficiency is accounted for in a satisfactory manner.

The CHAIRMAN: What is the difference between saying so-and-so, naming a person and giving the address and saying "This is the one who ran the business to the ground," and then saying that there is a deficiency and whether it is accounted for or not? How much of a plus are you putting on there and how much responsibility are you putting upon the trustee? Is that not all part of the same pattern?

Senator McCUTCHEON: If there is evidence of suspicion of a substantial disappearance of the property that is not accounted for, then I think the trustee is under the same obligation to go to, say, the crown prosecutor or the Attorney General and ask that action be taken. He is not asked to give his suspicions; he is asked to say whether there is evidence.

The CHAIRMAN: Yes. It says, "Whether there is evidence."

Senator McCUTCHEON: I can see no reason why that information should not be included in subsection (2), particularly having regard to the saving provisions of (4) and (5), which allow any person named and taking exception to this to go to the court before it becomes public. In the interval it is only the person named in subsection (a) that receives the information along with the Superintendent, and they receive it in an envelope marked "Private and Confidential". They ignore that there is responsibility.

The CHAIRMAN: There is a certain period of time that elapses between the time of going to the Superintendent and even getting to the stage where you have a part that is to be ultimately to be made available to the public. In the meantime, the person named is furnished with a copy and he can go to the courts.

Senator McCUTCHEON: He can go to the courts if he wishes to do so.

Mr. TASSÉ: I think that a trial of an issue on paragraph (a) would be quite different from a trial of an issue on paragraphs (b) and (c). In paragraph (a) if there is an issue before the court the only point to be decided is whether that person was for example, responsible for the management of the company. Now, if we get to (b) then we have to pass judgment on whether the deficiency was satisfactorily accounted for, which, in my view, is quite a different issue.

The CHAIRMAN: No. The two things in (b) are, first, whether the deficiency between the assets and the liabilities have been satisfactorily accounted for. Surely the trustee after two months of investigation can determine whether the deficiency has been satisfactorily accounted for; and, secondly, whether there is evidence. He is not passing judgment on the quality, but whether there is evidence of a substantial disappearance of property. He is the one who has to get possession of the property.

Senator McCUTCHEON: And the issue is whether the requirements of subsection (3) should be dispensed with. The court may very well say in the circumstances, "We do not think this should be filed by the Official Receiver based on what is disclosed in the report."

The CHAIRMAN: I think there is ample protection to any person who feels he is hurt, because he has 60 days within which to go to court, and if he can convince the court it is an improper statement the court will make an order.

Senator McCUTCHEON: That is right.

Senator ISNOR: Mr. Chairman, I wonder if you would enlarge on the word "substantial" in paragraph (b). If there is something that is not accounted for, does it matter whether it is substantial or not? I do not see the need for that word "substantial" in the paragraph.

The CHAIRMAN: Perhaps Mr. Tassé will reply to that.

Senator McCUTCHEON: Mr. Tassé is not worried if the petty cash is gone.

Mr. TASSÉ: That is correct. In a small bankruptcy there may be small amounts of money that cannot be accounted for and would not warrant a report.

Senator FLYNN: Probably they would want to see if there is *prime facie* evidence of something wrong. If there is definite evidence of wrongdoing, all right, but if the accounting would suggest that there may be something wrong, I think this is the meaning of the word "substantial".

Senator ISNOR: But my point is, that if there is something wrong, whether it is a difference of a small or a large amount, it does not seem to me that the word "substantial" is necessary. You are an authority, Mr. Tassé. Are you going to answer that question?

The CHAIRMAN: I asked Mr. Tassé about the word "substantial" and he said he was not thinking in terms of some amount of petty cash that was missing. I agree in principle that the amount is not really the issue, it is the question whether or not there has been some raiding of the assets. However, quite apart from the word "substantial", at the moment, I think the idea of the word "substantial" is not to put too great a burden on the trustee in the early stages of his investigation.

Senator McCUTCHEON: The difference between a peccadillo and a mortal sin!

The CHAIRMAN: Well, I will accept your views on that. May I call your attention, dealing with this same point, to page 15 of the bill under (d), providing that the trustee shall give a statement of the facts and information on which you relied in arriving at these opinions. Therefore, this will not be any jump in the dark which he will make.

Senator McCUTCHEON: Paragraphs (c) and (d) are not publicized.

The CHAIRMAN: No.

Senator McCUTCHEON: With that I agree.

The CHAIRMAN: I can see that paragraphs (c) and (d) might have great value for statistical purposes later when you are trying to study the effects leading to bankruptcy, and so on. Whether that information should be available at some time in the future is a distinct question. Perhaps it should be available.

Senator COOK: Am I to understand that if I were a bankrupt and the trustee were to report adversely on the bankruptcy, I would not get a copy under paragraph (c)?

The CHAIRMAN: Yes; you get a copy if you are named.

Senator McCUTCHEON: You do not get a copy under (b).

The CHAIRMAN: What we are saying is that we think (b) should be added to the information that is ultimately to be made available to the public, and therefore any person named should get the material and be able to go to court.

Senator COOK: I do not see why we should not get a copy of (c), because if we are going to be charged it would be awkward.

Senator FLYNN: I should say that paragraph (d) would be even more important.

Senator McCUTCHEON: I do not think the trustee should be bound to disclose the sources from which he obtained the evidence and on which he based his opinion.

The CHAIRMAN: If you will examine the items enumerated in (c) down to (ii), and including the Roman numerals (vi), those are items that would not impute any wrongdoing. However, VII and VIII are gross negligence and fraud, and you are getting into an area where the information should be available to the public and be part of the information that would be reported

under (2), and would be public if a person had been guilty of gross negligence and fraud. Where in the opinion of the trustees the probable cause is gross negligence, why should you pull any punches on that?

Senator McCUTCHEON: It seems to me, Mr. Chairman, that paragraph (c) is entirely a statement of opinion, and he may not be competent to state whether the trustee's opinion is that it was carelessness or gross negligence. He gives his opinion and says this is the reason for his opinion. Then the Superintendent can at that stage take what action he feels is warranted, and anybody who is charged has ample time to go to the courts. When there is a warrant issued or an investigation sent in to put him on his guard, I would say that perhaps that is a different matter.

The CHAIRMAN: I am inclined to agree with that, senator, that there is that difference between (b) and (c), and that, possibly, in (c) the information should only go to the Superintendent and he can make his investigation without the facts being known by those who may be involved in it. They will hear about it in time, if anything comes out of it. If the Superintendent does not uncover any information, it never becomes a matter for them.

I would be inclined to say that (b) should be included in subsection (2), but that (c) should remain where it is.

Senator McCUTCHEON: I would like to move that subsection (2), line 37, be amended by striking out the words "paragraph (a)", and substituting the words "paragraphs (a) and (b)".

Mr. HOPKINS: That is correct, that will accomplish it.

The CHAIRMAN: Then you would also have to amend further down in line 41.

Senator McCUTCHEON: Yes, the same thing. There will have to be a further amendment on page 16.

The CHAIRMAN: Yes, line 5, page 16, to make it read to cover both (a) and (b). I think those are the only places.

Senator McCUTCHEON: Yes.

The CHAIRMAN: Now that we have a motion in that regard, Mr. Biddell, your position, when you were making representations here was that both (b) and (c) should be included in subsection (2). I take it that is what you want to speak about now?

Mr. J. L. Biddell, F.C.A.: This section was in fact drafted by the committee of the Institute of Chartered Accountants, working with many of the credit agencies in Canada. We were concerned about the problem of a person who would guide one company into a bankruptcy and then incorporate a new company and guide that one into bankruptcy. We wanted the public record to indicate the pattern of this person's activities. When we drafted this proposal, we did not have in mind the use which could be made by the Superintendent's office, but clearly that is perhaps of equal importance. We were very concerned to find some solution to this problem of the re-entry of a chronic defaulter, going into one business after another. Unless we put on the public record not only his name but the manner in which, in the opinion of both the trustees and the creditors' representatives, the inspectors—because they are going to have to subscribe to this thing—unless we put on the record not only his name but whether or not there was a deficiency in the assets that was not properly accounted for, and how this bankruptcy came about, that is, how he conducted himself—we are not going to do the job for the business community.

This will do the job for the law enforcement officers and for the superintendent, but it will not do the job for which this section was designed by the accountants and the credit agencies.

I think it is most important that we put (b) on the record as well as (c), because if we do not, if we limit ourselves to naming the person who is responsible for conducting the day to day activities of this company that has gone bankrupt, and then do not say, as we should, in so many cases, that this bankruptcy was the result of misfortune, then we are damning that fellow by inference, and this we must not do.

Clearly, if we are going to put anything on the record, to name these people, we must put something further on the record to indicate whether this was an illegitimate bankruptcy or had illegitimate overtones.

Senator McCUTCHEON: What are you going to say if he puts on the record that it was fraud, and the court subsequently determined it was not fraud? The court decision will never catch up with the record.

Mr. BIDDELL: That is not so. The trustee files the report. As soon as he prepares it he sends it to the Superintendent, and sends it to the people who are named in the report, in an envelope marked "private and confidential". These people have 60 days from the time they receive that report, before it can get on the public record in any way.

Senator McCUTCHEON: True, but supposing eventually it does get on the public record?

Mr. BIDDELL: If they choose to ignore the report, and have had time to have the record altered or expunged, if they choose not to avail themselves of it, the law has done everything reasonable to protect them. They will have 60 days as an absolute minimum to apply to the court.

I can understand that the Crown's officers might be reluctant to have the court hearing held, at which the court might quite properly require the trustee to trot out the evidence—the report under subsection (1)(d), which goes only to the Superintendent.

I think it would be quite proper for the Superintendent, if he felt this matter should be investigated, or was in the course of being investigated, to require that such hearing not be held until he was prepared to have it go ahead. Under those circumstances it would not get anything on the public record until the court hearing had been held.

It would not inhibit the Superintendent's investigation. It would, to this extent,—it would tip off the person that the trustee and the inspectors, in certain cases, thought there was fraud involved; but it would not tell them why. There would be no indication of what evidence the trustee had. Those persons would not be able to find this out until the Superintendent had completed his investigation and taken whatever course he chooses.

Senator McCUTCHEON: I do not think it would work, because if I go into court and say I object to being charged with fraud by the inspectors, and these are my reasons, then, in order to satisfy the court as to whether they could conceal the document or not, the inspector, the trustee, would have got to bring forward the further evidence which you and I are in agreement should not be brought forward.

Mr. BIDDELL: That is true, but I am proposing a further amendment to this, that if the Superintendent does not wish to have that court hearing held, he may delay as long as he wishes.

Senator McCUTCHEON: I would not give any Superintendent that discretion.

Mr. BIDDELL: There is not going to be anything on the public record whatsoever, no report other than in the office of the Superintendent, to say any of these things, (a), (b), (c) or (d). The only people who will have it will be the Superintendent, and the individuals named on the private and confidential basis. It cannot get on any other record, so no one else knows, unless the

Superintendent chooses to put it out, until the court hearing has been held, if the person named attempts to apply for one.

Senator McCUTCHEON: If it were a substantial company that had gone bankrupt, and if this confidential report were sent to every director and officer, and to the people in charge of the day to day business, how many copies of a confidential document can be kept confidential?

Mr. BIDDELL: We have tried as carefully as possible.

The CHAIRMAN: One copy, if you keep it yourself.

Senator McCUTCHEON: That is right.

Mr. BIDDELL: I think it would be most unfortunate to have a person named, that the act require a person to be named, and put on the public record, and the trustee inspectors not to be in a position to put on the public record that they thought this bankruptcy was the result of misfortune. We think that if it is essential to get one thing on the record, it is essential to get the other.

The CHAIRMAN: Might I put it this way and say that you could have it that, is making (c) part of the material, making it go to the Superintendent and which in due course might get to the public, unless the court says no, if in relation to (c) you have only said "(c), including the items (i) to (vi)"—in other words, if the trustee under (c) is making a report that suggests (vii) gross negligence or (viii) fraud, that is not incorporated in any public document, it goes only to the Superintendent. Would there be value in having that distinction? I think that as far as Mr. Biddell is concerned, there would be value.

Senator McCUTCHEON: I cannot agree, Mr. Chairman. These are all value judgments. Was it over-expansion, was there a financial crisis which produced the result, when this expansion was perfectly legitimate? Was it unwarranted speculation? What is unwarranted speculation? It is speculation that did not succeed? It may well have been warranted the day it started. I think we are going to make it far too complicated.

The CHAIRMAN: There is an obvious answer that someone should have made by now. After all, when a bankruptcy occurs, a lot of people have been hurt. So, if there is somebody who in some way is identified with the causes leading to the bankruptcy, and if he gets a bit of the backlash, it is just one more.

Senator COOK: In other words we agree to make public the fact that he might have stolen, but we are rather afraid to say it is fraud.

Senator THORVALDSON: I am very much opposed to pulling any teeth out of this at all unless we have to. I am rather impressed by Mr. Biddell's argument in regard to this whole matter but at the same time I would agree that perhaps in regard to (vii) and (viii) in (c) if they have the report of the trustee that that should only go to the Superintendent and not the others, because it would be so difficult to keep it confidential as it ought to be. But I would not like to see us emasculate this section very much.

Senator McCUTCHEON: We are not emasculating it. By what I have suggested we are strengthening it because I am suggesting that we should not go as far as Mr. Biddell suggests. What you are suggesting, Mr. Chairman, is to write two reports, or else no report to the persons named, and a secret report to the Superintendent which would immediately imply that the trustee and the inspectors considered a bankruptcy was a result of gross negligence, fraud or some other sinister reason.

The CHAIRMAN: It isn't difficult to see why, if you are going to include (c) in this list of things you are going to publish. Let us assume there is gross negligence or fraud which brought about this situation. The trustee, in making a report under (c), and if there are two items under (c) that are going to be

eliminated, may ultimately get to the person concerned. That is if he cannot answer (c).

Senator McCUTCHEON: When he cannot answer (c) everybody knows it is fraud.

The CHAIRMAN: That is the difficulty. We have a motion that subsection (2) on page 15 be amended by striking out paragraph (a) and inserting in its place paragraphs (a) and (b), that is at line 37, and also the same in line 41. Are you ready for the question there?

Senator FLYNN: Before we pass from that, I have a question. It may be a problem of semantics. When we consider this report that the trustee is to make we have to recall that subsection (6) does not make him liable for any statement. But why do we say "in the opinion of the trustee" six times in (a), (b) and (c) of subsection (a) at the bottom of page 14

...in the opinion of the trustee actively controlled the day-to-day operations of the corporation or the business of the debtor or who in the opinion of the trustee were responsible for the greater proportion of the debtor's liabilities or under whose directions in the opinion of the trustee the greater proportion of the debtor's liabilities were incurred;

Then we have in (b) "whether in the opinion of the trustee the deficiency..." etc., and then in (c) "a statement of opinion by the trustee..." I wonder why we always insert "the opinion of the trustee"? Is it to protect him? It seems to me that in paragraph (b) it is not a question of opinion at all but a question of fact:

Whether in the opinion of the trustee the deficiency between the assets and the liabilities of the debtor has been satisfactorily accounted for or if not whether there is evidence of a substantial disappearance of property that is not accounted for;

This is a question of fact rather than a question of opinion. Are we trying to give him a chance to say nothing about it?

Senator McCUTCHEON: When you insert the word "satisfactorily" it becomes a matter of opinion.

Senator FLYNN: But why is it there five or six times?

Senator McCUTCHEON: Perhaps it makes the trustee feel happier.

Mr. TASSÉ: It is a difficult task for the trustee because sometimes there may be room for a difference of opinion. We can not ask for more than his opinion. He will have, on the other hand, to state the facts on which he bases his opinion.

Senator FLYNN: Somebody named in the report can apply to the court and have it modified. I do not see why it is always repeated. With regard to the publication of this report, Mr. Chairman, I have some doubts about subsection (6).

The trustee is not liable for any statements made or opinions expressed by him in good faith and made or purporting to be made by him pursuant to this section, nor is any person liable for publishing, or referring to any matters contained in, the report of the trustee—

Why do we have to say that in this way? Somebody might incur liability, without cause, in publishing a report like that. We are saying here that any person after—

The CHAIRMAN: That is after it goes into the possession of the official receiver.

Senator FLYNN: Even if the person is not justified in publishing this report, why do we say he will not be liable?

The CHAIRMAN: Well, you have defeated part of the purpose of this section. As I see it this is an attempt to make use of the publicity as a deterring factor and also to advertise those who are making a practice of bankruptcy and where you have a recurring situation. Therefore it is courting publicity. But should we deal with that part at this stage?

Senator FLYNN: Well, usually in these matters you don't have to court publicity. The press is free to publish whatever it thinks it can publish, but to say that it can publish it and refer to it without being at all liable, when it would not otherwise be justified in doing so—

The CHAIRMAN: But this exemption from liability is only in relation to the publication of the contents of the report. If they make comment on it, they do not have any protection and they would have to face the possibility of an action for libel.

Senator FLYNN: I don't think we have to say anything at all.

The CHAIRMAN: Once you accept the principle that you are looking for help from publicity, and if part of the purpose of these amendments is to this effect, you have got to make it as effective as you can, and make it possible for publications to pick up information and publish it. If they comment on it, that is another matter and it is their business.

Senator FLYNN: It seems to me that the purpose of that is to prevent the publication before the decision of a court.

The CHAIRMAN: I think the purpose is to encourage publication, after a report has reached the stage where it is a public document.

Senator FLYNN: If that is the purpose I am against it.

The CHAIRMAN: The same amendment would apply to subsection (4) at line 5. Are you ready for the question in relation to subsection (2) and subsection (4)?

Hon. SENATORS: Yes.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now, I should refer to (a) at the bottom of page 14, because I believe there was some suggestion by Mr. Biddell in connection with that section as to including the names and addresses of directors and officers. Do you have some comment, Mr. Tassé?

Mr. TASSÉ: It was suggested by Mr. Biddell that the words "names and addresses of the directors and officers of the corporation" should be dropped. I beg to disagree, I think that this information should certainly stay in. It would be important to know who the directors and officers of the corporation were. The committee might be interested to know that there is evidence that in some of these fraudulent schemes that were uncovered, the directors and officers had just acted as front for the operator. This would have the effect of making these persons more careful before they lend their names to dishonest operators.

The CHAIRMAN: Yes, and, Mr. Tassé, so many statutes now about to become law, etcetera—and I think some of the senators know to what I am referring—add more of a burden and responsibility to the directors. Maybe they should; it may make it more difficult to get directors.

Senator McCUTCHEON: Maybe that would be a good idea.

The CHAIRMAN: I think maybe it would be too. It would be easier to say, "no." If you are connected with a company and something happens to the company, the public already knows you are a director.

Senator McCUTCHEON: You should not be able to shrug your shoulders and say, "I was busy. I did not pay any attention."

Mr. TASSÉ: That is the purpose of this.

Senator McCUTCHEON: I agree with that.

The CHAIRMAN: Section 18 of the bill, with the amendments we have proposed, is now carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 19.

Mr. TASSÉ: There were some suggestions made with regard to clause 19, and one of them related to section 160(f).

The CHAIRMAN: Yes.

Mr. TASSÉ: The suggestion that was made by Mr. McQuillan was that there may be cases where a trustee may be warranted to suggest or recommend that a petition be filed against a company or debtor for a receiving order. The question that Mr. McQuillan asked then was whether someone would not be justified in such an instance to argue, "This is soliciting on the part of the trustee".

My comment on this is that the words: "solicits" and "canvasses" are now in the act, and the act now says that "a person who, being a trustee, solicits or canvasses . . ." may be guilty of an offence.

The only thing we are doing is striking out the words "being a trustee" so that any other person, whether an employee of the trustee or a person, for example, running a financial consultant business, would come under the provisions of this section and may be prosecuted. We have not changed the substance of the offence. We are just saying this should apply not only to trustees but to all those who are indulging in solicitation or canvassing.

The CHAIRMAN: Let us suppose that a company consulted its lawyer and exposed what the situation was and asked, "What is your advice?" I do not think an opinion, advising the company, for instance, that the only course it should take is to make an authorized assignment—I do not think that advice would be "soliciting" or "canvassing."

Senator FLYNN: But if, after you have given the opinion that, "you should make an assignment," they ask you for the name of the trustee, you cannot give any name because you would, in fact, be canvassing then.

The CHAIRMAN: No, this is canvassing any person to make an assignment.

Senator FLYNN: Once you have said, "You should make an assignment," and say, "Go and see so-and-so"—

The CHAIRMAN: If the lawyer gave the advice he might say, "Here is a list of trustees in the area. If you are proposing to make an assignment you should go and talk to one of them."

Senator FLYNN: Then they will ask you who is the best one.

The CHAIRMAN: That is a matter of opinion, again.

Senator THORVALDSON: I cannot conceive, Mr. Chairman, that advice of that kind offered by a lawyer would come within paragraph (f).

The CHAIRMAN: If any other person not in the position of a lawyer gave this advice, would he be "soliciting"? I do not think he would, if his opinion was asked for. Is he "canvassing"? I would not think that he was.

Senator THORVALDSON: This is aimed at a definite and distinctive abuse which was serious.

The CHAIRMAN: Yes. Was there anything else there, Mr. Tassé?

Mr. TASSÉ: Yes, Mr. Chairman. On page 17, the third paragraph, it was suggested that after the word "bankrupt" the words "or as joint trustee to a proposal" be added so that the sharing of fees between joint trustees to a proposal would not be considered as an offence. This is acceptable. That

amendment would necessitate the adding of the following words after the word "bankrupt" on page 17, line 12: "or as joint trustee to a proposal."

Senator McCUTCHEON: I so move, Mr. Chairman.

The CHAIRMAN: "Nothing in paragraph (h) of subsection (1) shall be construed to apply to a sharing of trustee's fees among persons who together act as the trustee or joint trustees"—

The LAW CLERK: No, it is right after the word "bankrupt" you add the words.

Mr. TASSÉ: Yes, Mr. Hopkins.

Senator LEONARD: Why should it not be after the word "trustee"?

The LAW CLERK: What words would you suggest, Mr. Tassé, and where would you put them?

Mr. TASSÉ: After "bankrupt" in line 12, "or as joint trustee to a proposal."

The CHAIRMAN: Any comment, Mr. Greenblatt or Mr. Biddell?

Mr. BIDDELL: There is just the problem of a person being considered to have committed an offence if he solicits a petition or receiving order. We have many credit associations, trade associations, and so forth, who have meetings of members, and they might find out that one of their joint customers is in serious difficulties, and it is good business and in the best interests of the business that the association might advise one of its members: "In order to protect all of us, we must get a petition against this particular debtor." Under the wording of this proposed section the officer would be committing a criminal offence. It seemed unreasonable that that would be the case because there are so many occasions when this is required. Any person who solicits or canvasses any person to make an assignment or to petition for a receiving order—an officer of an association who clearly sees that his members should move in on this particular debtor to try and protect themselves and advises them, from the information that he has, that one of them should file a petition in order to protect themselves, is now to be guilty of a criminal offence.

The CHAIRMAN: That is very interesting, Mr. Biddell.

Mr. Michael Greenblatt, Q.C.: It goes further than that. All these trade associations, such as the Shoe Association, the Clothing Association, the Dress and Garment Association, and the Lumbermen's Association, make it a duty on the part of their members to report to the association that they are having difficulty with their accounts, that they are not meeting their obligations, and so on, so as to be able to restrict further extension of credit. When that report is given it is given under the obligation that membership in the Association calls for it, and if the Association officer can no longer and does not avail himself of that information so as to put a stop to a debtor who should no longer be in business, or see that a petition in bankruptcy is made against a defaulting debtor or call upon that debtor to come to the offices of the association and meet with a committee of the creditors or members, the objectives of the Association to cut down on loss for the trade, will be defeated.

The CHAIRMAN: Do you think that is "soliciting"?

Mr. GREENBLATT: Yes, because the clause reads "in any way solicits a person to make an assignment" etc.

Senator THORVALDSON: I suggest we let the courts deal with that matter. I, for one, am perfectly satisfied that is not soliciting.

The CHAIRMAN: I do not think that is "soliciting" or "canvassing". People who are in the position of creditors have some rights.

Mr. BIDDELL: They should make it, "except in those cases where an interest lies in the case of a creditor or someone acting on behalf of a creditor," and make an exception. That would define "soliciting" and "canvassing".

Senator McCUTCHEON: As soon as you make an exception you rule out a lot of other cases, or you may.

The CHAIRMAN: What exception are you saying?

Mr. GREENBLATT: That being a creditor or acting for a creditor, you should be entitled to do this.

Senator FLYNN: I have a suggestion. I think the main thing is the preventing of trustees or any persons acting for trustees doing any canvassing. That is why we should say "being a trustee or being a person acting directly or indirectly for a trustee, solicits or canvasses any person to make an assignment".

The CHAIRMAN: That is right.

Senator FLYNN: It is possible that we could make a proposal under this—this was forgotten, I think. We should come back to the main idea that was contained in the former subparagraph (f) and say "being a trustee, or acting directly or indirectly for a trustee".

The CHAIRMAN: Let us obtain Mr. Tassé's view on this.

Mr. TASSÉ: I am not sure that this will get to the activities that we would like to get at. There are so-called financial consultants who, through reading in the newspapers, obtain the names of persons who are in financial difficulties. They then go around, get in contact with them, and the only thing they say is: "Your situation is very bad, you should see trustee so-and-so." And they obtain a fee for this service, so-called. This is the type of thing we are trying to get at. There may be no connivance at all on the part of the trustee involved. This may be done behind the back of the trustee. That so-called consultant may have just informed the trustee: "I will send you only persons who ask for advice". I am afraid that we will not be able to get at those persons if this section is amended in the way that has been suggested.

The CHAIRMAN: It seems to me that no matter how you try to word the exception you run into problems. If we put in an exception to the effect that it must be a creditor, then that financial consultant who is running around trying to get a fee could quite easily become a creditor so as to come within the exception. It seems to me that the only thing to do would be to say "not being a member of a recognized credit association". Perhaps that could be made an exception. That is, if a person who was not a member of a recognized credit association solicits or canvasses or suggests to any person that he petitions in bankruptcy then he may be subject to this provision. I do not know what other kind of exception could be put in there. Mr. Tassé says that this is intended to cover a certain situation that was not covered before by the language "being a trustee" or "being a person directly or indirectly acting for a trustee". Mr. Tassé says that that does not cover the kind of situation that is contemplated here, and which we must accept, I think, as being the situation they are trying to get at. Therefore, in doing that how do we exempt from the possible effect of this subsection some action by a recognized credit association? Should we face it and just say "except"?

Senator THORVALDSON: Perhaps we might get the opinion of our own counsel in regard to this clause. We could ask him if he believes it would prejudice the situation suggested by Mr. Greenblatt.

Mr. HOPKINS: If what is aimed at is soliciting or canvassing for a fee, then it seems to me there would be no objection to putting in those words and making it abundantly clear that it is the fee aspect that this clause is aimed at.

Whether those would be the precise words used in the statute, I do not know, but such a provision would protect everybody who was not charging money.

Senator THORVALDSON: But that becomes a very difficult matter to control.

Mr. HOPKINS: It may.

The CHAIRMAN: That is certainly taking out of the subsection any teeth that it has.

Senator LEONARD: Would the Superintendent take on the responsibility of approving credit associations as being bona fide for the purpose of the exemption of this section?

Mr. TASSÉ: I am sorry; I did not hear you.

Senator LEONARD: I was suggesting that there might be an exception in the case of associations approved by the Superintendent of Bankruptcy.

Mr. TASSÉ: That may be something to consider.

The CHAIRMAN: What do you think of that, Mr. Biddell?

Mr. BIDDELL: I think that that would be all right. I want to have something on the public record to the effect that the Superintendent should not feel obliged to start prosecutions on matters that could be validly conducted by a credit association.

There is one other thing that I would like to suggest right at this point, and that is that it should be legal to solicit a petition with the consent of the debtor. This covers the situation where the debtor's business is in financial difficulties, and he hopes to save it with the assistance of a competent trustee in working out a proposal. In order to prevent somebody putting him into bankruptcy for the sole purpose of obtaining the fees that the bankruptcy will provide he has to be a petition on the record, because the court is going to appoint the trustee named in the first petition on the record. We are facing this situation all the time. We handle a great many proposals. Our aim is not to see that a business disappear in bankruptcy, but to try to save it. In order to do that it is absolutely essential to have a petition on the record during the period needed to work out a proper proposal. This is where the credit associations come in. They want to save the business too, and the officers of the credit association will go to one of their members and say: "We are trying to save this thing, but we must get a petition on the record".

The CHAIRMAN: But, Mr. Biddell, when these amendments provided for in the bill become law one of the steps available will be the right of the debtor to make a proposal.

Mr. BIDDELL: That is right. That is fine.

The CHAIRMAN: And if the proposal is accepted by the creditors then that is the end of the matter.

Mr. BIDDELL: That is correct. They can make a proposal now, but the problem is that to work out a sensible proposal sometimes takes two or three weeks, and unless you, as a trustee and an accountant who is trying to reorganize the company, can have yourself named as a creditor in the first petition in bankruptcy on the record the whole thing is going to attract a whole lot of people who are trying to get a bankruptcy for the sake of the fees. The only practical way in which it can be worked out is to have the first petition go on the record naming the trustee who is spending his time and effort in trying to reorganize the business.

This is where the credit associations come in. They recognize that this is being done, and they go to one of the creditors and say, "We want you to file a petition against this company, not for the purpose of putting it unto bankruptcy but merely for the purpose of preventing other people trying to put it into

bankruptcy for their own selfish ends while we are trying to work out a reorganization." In those circumstances the debtor is in agreement with the idea of a petition being filed against him, because it is not being filed in order to put him into bankruptcy; it is part of a scheme of reorganization, and the credit association does the work.

The CHAIRMAN: But you are saying this subsection should not apply where you have the consent of the debtor. That will not work either, because if the financial consultants that Mr. Tassé talks about and the debtor get together then you have got that same situation, and no prosecution could result. So, that will not cover the situation. I do not know how we can go much further than saying that where you have a credit association recognized by the Superintendent of Bankruptcy then this section does not apply to it.

Senator McCUTCHEON: Mr. Chairman, I am a creditor, and I know that there are difficulties arising. I am not a member of any credit association, but I do know of other creditors of the same debtor and I get in touch with them and say: "If we are going to save anything out of this we have got to do this and that". It is my opinion that that is not caught by this section.

The CHAIRMAN: No, that is perfectly legitimate.

Senator McCUTCHEON: I think this section is all right as it is. If it is not then it can be amended. Mr. Biddell has put his position on record.

Mr. BIDDELL: That is all I wanted to do.

The CHAIRMAN: We have debated this thing all the way around a circle. Certain things have been suggested that can be justified, but then you find that you end up with more difficulties.

Senator COOK: Perhaps any question arising out of subparagraph (f) could be left for decision to the courts.

The CHAIRMAN: Whether we should leave it in the broad language that is there now, or accept what Senator Flynn has suggested, namely that there be inserted the words "a trustee or any person acting directly or indirectly for a trustee"—

Senator McCUTCHEON: That will not catch the vice.

Senator THORVALDSON: I much prefer the present language.

The CHAIRMAN: I think the safest course for us to follow at the moment is to leave it as it is.

Senator FLYNN: I insist on adding "or a proposal" so that it reads "to make an assignment or a proposal under this Act". The idea now is that a proposal, when it is not accepted, becomes a bankruptcy or an assignment. Therefore, it would be very easy for a debtor to make a proposal in order to gain time, and it would be easy for a trustee who has a client to say, "We will make a proposal, and I will be appointed trustee, and then if the proposal is not accepted I will have control of the assets, and I will be there first." So, you certainly defeat the purpose of this section by not including "a proposal under this Act."

The CHAIRMAN: Have you any comment to make, Mr. Tassé?

Mr. TASSÉ: I am inclined to agree with Senator Flynn, because if we accept that an offence would lie if there is a soliciting of an assignment or a petition, it should also apply to a proposal, because a proposal that is not approved or accepted is deemed to be an assignment.

The CHAIRMAN: Then what you want to do is to strike out the words "or to petition for a receiving order". Is that correct?

Senator FLYNN: So that it will read, "to make an assignment or a proposal under this act."

The CHAIRMAN: Does the committee agree to that amendment to paragraph (f) or subsection (1) of section 19?

Hon. SENATORS: Agreed.

The CHAIRMAN: Now section 20.

Mr. TASSÉ: Mr. Chairman, there were no representations made about section 20.

The CHAIRMAN: Shall section 20 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now, section 21, Part X. Mr. Gibeau, from Edmonton, Alberta, is here, and he is the Chairman of the Debtors' Assistance Board in the Province of Alberta. By telegram he asked for the opportunity to be heard and we agreed to hear him, so I think this is the proper place.

Mr. Philippe J. Gibeau, Chairman, Debtor's Assistance Board, Province of Alberta:
Mr. Chairman, honourable members of the committee:

The comments on Bill S-17 of the current session of the Senate entitled "An Act to Amend the Bankruptcy Act"—hereinafter called the Bill—have been prepared by the Debtors' Assistance, a branch of the Attorney General's Department of the Province of Alberta—hereinafter called the "Board"—The board's comments will be limited to the Orderly Payment of Debts Sections being Part X of the bill.

HISTORY OF THE BOARD

The board has been in operation in Alberta since May 1, 1943. It replaced the Debt Adjustment Board which had been enacted during the late 1920's. Its main objectives are generally to render service, advice and assistance to debtors who are unable to meet their liabilities and who, through proceedings in the courts or otherwise, are being pressed for payment or harassed by their creditors. The board has five offices located in five major centers in the province, serving the entire population.

For the past 20 years the board has assisted many Albertans by analyzing their financial difficulties and suggesting or implementing solutions for them such as, the consolidation of debts, arrangement for monthly payments and like plans. However, many arrangements were thrown out of balance by a creditor refusing to co-operate and garnisheeing the debtor's earnings, or otherwise resorting to remedies at law. In many instances, this left the debtor with no alternative but to make an assignment into bankruptcy under summary administration, which in effect is personal bankruptcy. In the event that the debtor could not raise the Trustee's fees to enter bankruptcy, he and his family became one more name upon a growing list of welfare recipients.

In Alberta we pay out \$3 million per month to people on welfare, and \$1 million of this amount per month is paid to people who are able to work and have jobs but cannot hold a job because of debts.

The following is an example of a creditor pool which the board has administered:

EXAMPLE

Mr. A. is a married man with one child. His income including family allowance amounts to \$246.00 per month. He was able to pay \$62.00 per month on behalf of his creditors as follows:

1. Books	\$237.50	\$ 7.00
2. Clothing	29.39	1.00
3. Clothing	150.70	5.00
4. Department Store	58.85	2.00
5. Clothing	85.99	3.00
6. Clothing	121.67	4.00
7. Furniture	63.95	2.00
8. Department Store	134.06	4.00
9. Hospital	20.00	1.00
10. Clothing	25.00	1.00
11. Finance Co.	409.16	15.00
12. Garage	69.33	2.00
13. Jewellery	29.80	1.00
14. Garage	73.49	2.00
15. Clothing	49.82	2.00
16. Department Store	35.62	1.00
17. Groceries	25.84	1.00
18. Clothing	147.08	5.00
19. Utilities	34.54	1.00
20. Telephone	66.36	2.00
	<hr/>	<hr/>
	\$1858.15	\$62.00

Most situations conform to a pattern identical or nearly identical to this example. In all instances a cross section of the business community is represented among the creditors. As a rule, the majority of creditors will co-operate with a proposed plan of payment, but it is immediately evident that one dissatisfied creditor, comparing his small portion to his total debt, may be dissatisfied and refuse to participate. His subsequent actions can destroy the entire plan.

As the post war population grew, the number of persons consulting the board, seeking its advice and solutions, increased correspondingly, and with them, the problems of proper administration. As credit became easier to obtain, the problem became acute. It became obvious that the situation could not be properly handled informally but that adequate legislation was needed in this area. Only through such legislation, properly recognizing and balancing the rights of all parties involved, could a workable scheme for the orderly payment of debts be realized. The board recognized this need and began the ground work for legislation in 1957. In co-operation with the Department of the Attorney General for the Province of Alberta the necessary provisions were assembled.

HISTORY OF ORDERLY PAYMENT OF DEBTS LEGISLATION IN ALBERTA

On April 7, 1959, the Orderly Payment of Debts Act was passed by the Legislature of Alberta. Under this Act, a debtor unable to meet all of his liabilities could obtain relief from the remedies of his creditors against him at law by applying to the Clerk of the District Court for a consolidation order of certain of his debts. Notice of the application would be given to all known creditors and the order, once given, would bind both the debtor to payment and the creditors to acceptance. The creditors would be prohibited from proceeding independently and would receive a pro rata share of the payment proceeds. Procedure for setting aside or varying the order as circumstances required was provided.

There appeared the possibility of conflict between the Act, as passed, and the federal power to legislate in the field of bankruptcy and insolvency. On this ground, the legislation was referred by the Provincial Government to the Supreme Court of Alberta for its ruling upon the constitutional issue. The Supreme Court of Alberta on October 10, 1959, ruled that the Orderly Payment of Debts Act was outside the jurisdiction of provincial legislation, that matters dealing with insolvency belonged exclusively to Parliament under the British North America Act, and that the legislation infringed upon the Federal Bankruptcy Act.

On appeal to the Supreme Court of Canada, the decision in the Alberta Supreme Court was upheld. The Orderly Payment of Debts Act was ruled *ultra vires* of the province, the pith and substance of the legislation being bankruptcy and insolvency.

Following the decision of the Supreme Court of Canada, the board proposed that it be considered for appointment as a trustee under the Bankruptcy Act with a view to having debtors formulate proposals, rather than making assignments into bankruptcy and, perhaps, receiving a discharge within one year. The course followed instead was a request on behalf of the Government of Alberta that Parliament enact the substance of the Orderly Payment of Debts provisions as a part of the Bankruptcy Act, with the proviso that any province be permitted to proclaim, at the request of the Lieutenant Governor in Council, that such provisions as enacted be in force in that province.

The board is grateful to the Government of Canada that this request has been considered and adopted in the bill as Part X. The board is grateful to the Senate of Canada, and particularly to this committee, for on two occasions, December 18, 1962, and again on July 30, 1963, the Senate passed these provisions as Bill S-2 which now form part of the Bill S-17 as Part X.

The board has been requested to support various proposed amendments to Part X of the Bill, purporting to meet specific requirements of certain geographical areas of the country. The board, having considered these suggested amendments and recommendations, is of the opinion that the legislation proposed in Part X should be passed as drafted. Part X is in such form as to allow its implementation in all provinces of Canada, having regard to local conditions, by virtue of the scope given by section 196. The board has been actively engaged in the area covered by Part X for many years and the provisions of the legislation are by no means strange to it. The original legislation fostered by the Board of Alberta arose in part from a careful consideration of similar legislation in other parts of Canada, notably Quebec, Ontario, and Manitoba. As then proposed, and in substance identical to the provisions of Part X, this legislation was designed to function with success in the major centers of Calgary and Edmonton. Part X as it appears in the bill is adaptable to any part of Canada. As such it will permit Canadian families to obtain competent advice and counselling on domestic and financial difficulties, to better plan their financial affairs, to regain a place in the community and, above all, to do so with a measure of self-respect, by retiring their debts through their own efforts. This surely would be preferable to perpetual "bondage in debt" and support at the expense of the public.

The CHAIRMAN: Thank you, Mr. Gibeau.

Senator ISNOR: Would the witness state whether he is representing the Province of Alberta?

Mr. GIBEAU: Yes.

Senator ISNOR: And this is a branch of what?

Mr. GIBEAU: The Attorney General's Department.

The CHAIRMAN: Part X, as incorporated in this bill, has been before the Senate committee on two previous occasions. On both occasions we approved. I have seen no indications that we might disapprove this time.

Representations were made in the course of the hearing as to the difficulty that part X in its present form might present if one were seeking to have a province like Ontario, for instance, adopt it. What I suggest is that Mr. Biddell may have a statement to make, so as to put on record here the position as he sees it in relation to Ontario, for instance, so that if a problem develops later, and if the co-operation of Ontario is sought, it will be known and appreciated that this viewpoint was presented here and is a matter of record. Mr. Biddell?

Mr. GREENBLATT: I would add that Mr. Biddell is speaking not only for the Province of Ontario but for the Province of Quebec.

Mr. BIDDELL: On the subject of orderly payment of debts, we in the provinces of Ontario and Quebec think this is good legislation and we would like to be able to adopt it. This bill is almost exactly in the form that it was earlier passed by the Senate committee. The bill in this form was considered most carefully by a Canada-wide committee appointed by the Canadian Institute of Chartered Accountants. We spent a great deal of time on the orderly payment of debts legislation, because we believe that in its present form it would be difficult to have the act apply in large centres of population such as Toronto and Montreal, for instance.

Senator ISNOR: Why?

Mr. BIDDELL: Because there would be a very much greater volume of work, a great many more applicants in those centres, than would be experienced in places such as Saskatchewan or Alberta. We would have ten to twenty times the volume in Ontario that they would have in the Province of Alberta, for instance.

Senator THORVALDSON: What about the City of Winnipeg, where this law had its very beginning, in the Province of Manitoba? It goes back to 1932, and to my personal knowledge it was extremely successfully operated in the City of Winnipeg and throughout the province. The City of Winnipeg now has a population of nearly 500,000. I say this to you because that is where this legislation originated and in fact it continued there for this whole period of time, without being contested or questioned as to its legality. It was only when the decision was made by the Supreme Court of Canada regarding the Alberta act, that the Manitoba administration found that it had to discontinue its operations.

Mr. BIDDELL: I recognize that, but if you look at the bankruptcy statistics you will see that even in the City of Winnipeg you are much more fortunate than Quebec City, Toronto or Montreal.

The CHAIRMAN: They are all sound people in Winnipeg?

Mr. BIDDELL: I have only a few points I would like to make, honourable senators, as to amendments we feel would make this legislation, which basically is very worthwhile, acceptable and practicable in the provinces of Ontario and Quebec.

The first of these, and perhaps this can be done under section 196, as pointed out by the previous witness, is that we think that in order to be workable it is absolutely essential that debts owing to the Crown should be required to come under the consolidation order and stay of proceedings that this legislation would envisage. One of the most active participants in garnisheeing wages, and in chasing a person from job to job, is the Department of National Revenue, for income tax. It is quite proper that they must collect the money but this puts people on the relief roll, because employers will not put up with garnishee orders and will not continue to employ those persons.

The point may be made that under all the other sections of the Bankruptcy Act, the Crown is bound by the Bankruptcy Act, and the stay of proceedings by the Crown is against the Crown. The Crown does get a priority in the distributions although it is only by tradition that the Crown gets its priority. If it is necessary to continue that, that is fine; but we think it essential for the proper and correct working of these proceedings that the Crown not be permitted to upset these proposals by garnisheeing the entire part of the wages and making the plan envisaged by these sections completely inoperative.

We further think that, as far as a class of debts which should come under these provisions, there are many cases where the only reason an individual who is now working for salary or wages is unable to meet his debts is that he has a holdover of debts from some previous business venture. He may have been engaged in a small business or may have even been operating within the framework of a corporation and has guaranteed some of its debts. Those debts still are pursuing him when his only source is wages or salary. There is an automatic limitation of debts to the extent of \$1,000 under this plan. So we think that, where a debt is under \$1,000, and even though it arose out of a previous business transaction in which that man was engaged, it should still come under this plan.

One of the points that greatly concerns us is that, under the new proposed section 186 in this bill there is a provision for the clerk of the court to take an assignment or an attachment on any property of the debtor, and particularly to take an assignment of his present and future income. Now, we have a very serious situation in the Province of Ontario, where apparently it is quite lawful to have an assignment of a person's future wages. As I mentioned when I was here earlier, there is a case now before the Supreme Court of Canada, where a credit union is appealing the right to continue such an assignment of wages in effect, even after a person has received a discharge in bankruptcy.

It is going to be impracticable for a debtor who will come under one of these proposals, if the clerk takes an assignment of wages, and then finds the man, through changing circumstances, is unable to keep up with the payments. He wants relief through bankruptcy, but the clerk has already taken an assignment of his wages for the future, and he is locked in for life. We do not think that under these provisions the clerk of the court should be entitled to take an assignment of a man's wages.

Senator ISNOR: The Department of National Revenue does that at the present time, does it not?

Mr. BIDDELL: I do not know, sir. One of the things that also concerns us is the position of a secured creditor. It is the practice of at least some lenders to have a chattel mortgage on a debtor's household effects or whatever assets he may possess. Under the present bill, such a creditor could assert his claim against the fund, not attempt to seize his security until he has obtained enough money out of the fund, and then seize his security and leave the debtor without his assets.

We think that if a creditor who has security is going to elect to take a distribution out of this fund, then he must be restricted from seizing his security as long as the debtor is keeping up the payments which he contracted to make under the plan. We also think it most important that there be provision written into the bill for automatic termination of these proceedings. We can understand why they would work certainly in relatively smaller areas where there might be 50 or 100 applications a year, but we expect that with the acceptance of this procedure in the provinces of Ontario and Quebec there may be thousands of applications, and unless there is some provision for automatic termination of these affairs, there may be a great many started which will

never be completed, and there is no provision for getting this great mass of paper out of the courthouse.

There may well be complete confusion as to the status of these affairs. We feel that if the debtor is in arrears for three payments or 90 days, then the matter should be automatically terminated. The debtor, of course, would have an opportunity to apply to the court to keep the plan in effect. If the debtor does not, then we think it should be cleared up by having an automatic termination provision in the bill so that the file can be closed.

Senator McCUTCHEON: This would not prevent him from applying again?

Mr. BIDDELL: Not at all. Another thing that concerns us in the provisions of the bill as drafted is the creditor who may have a very substantial provision for interest in the contract and who should be required to either freeze the amount or only have interest at some reasonable rate. Many of these people have borrowed money from small loan companies and they may be quite properly subject to an interest rate of 24 per cent per annum. We feel there must be some provision for dealing with the matter in some reasonable fashion, that is the matter of the accruing of interest because in many cases the payments made might never catch up with the interest.

In the Institute of Chartered Accountants committee we went into this rather thoroughly and we made some proposals and some specific suggestions in our brief as to how this matter of interest should be treated. I shall not go into them at length at this stage since our views are already known to the department. We strongly feel, however, that there should be some provision in the bill to deal with interest accruing on the claims of creditors who elect to come under the orderly payment of debts provisions. It may be that section 181, subsection (2) is such that when a creditor elects to come under the bill it would in effect create a judgment in his favour. That may in itself terminate the interest under the contract, and put it in the Judicature Act. But this is something that should be clarified in the event that that should not be the case.

Just one last word; I would not suggest and I would not like to see these proposals for orderly payment of debt provisions held up because of the difficulty of drafting amendments, but one of the things we would like to see and about which we intend to make submissions to the committee that will be studying the overall revision of the Bankruptcy Act, is that this plan be the poor man's proposals and be administered by a government official as already contemplated rather than that the clerk of the court have the arbitrary right to deal with creditors and to determine what payments shall be made, and that he shall work it out and submit it to the creditors who will vote on it in the same manner as they would on a proposal made by a creditor. Then if the arrangement is not satisfactory the debtor goes into bankruptcy.

There may be cases where the suggestion put forward may seem ridiculous to the creditors. The result will be that in Ontario, for example, there will be 25 or 30 courts which will have the ability to work out sensible plans under this proceeding. And we feel that the creditor should have some say in these plans. As I say, this is a matter which we will bring up at some future time, and I am not suggesting we should delay the passage of Part X here but we would like to recommend that you accept the other amendments as put forward.

Senator THORVALDSON: I have just one question in regard to the powers of creditors in this matter, which I feel to be quite reasonable. Would the powers be exercised by a majority of the creditors?

Mr. BIDDELL: Yes. We would suggest that the same rules should apply as now apply for a commercial creditor. That is to say he must get 75 per cent of the dollar value and he must get the majority of those eligible to vote.

Senator BURCHILL: Do I understand you to say that this legislation is not practicable in the provinces of Ontario and Quebec?

Mr. BIDDELL: We do not believe it is practicable without the amendment suggested. We don't have a reasonable practice at the moment. In Ontario we have a division court. We would like to have this legislation, but we would like some changes in it.

The CHAIRMAN: I think, Senator Burchill, that under Part X, the fact that this bill becomes law does not mean that Part X is enforced in each province of Canada. The province has to accept it, as I understand it. If there are difficulties in the way of acceptance by Ontario, it means that Ontario will not accept it in the present form. What I would suggest to the committee, however, is that I think that some of the amendments suggested by Mr. Biddell and supported by Mr. Greenblatt have some merit, but on the other hand we have approved of Part X on two occasions and perhaps it should be given a chance to work. Then if there are difficulties or if Ontario or Quebec say "We would like to adopt this legislation but there are some amendments required to make it work in our province," that might be the time at which amendments should be considered.

Senator McCUTCHEON: I don't think we should delay this at the present time. The legislation provisions in section 196 are very, very broad. The Governor in Council can put in these amendments with respect to any province which says the type of amendments it wants.

The CHAIRMAN: Mr. Gibeau may want to say something, but before you do, if you are able to interpret the view of the committee as I have, I think they approve of Part X.

Mr. GIBEAU: We have considered this amendment and so has the Department of Justice.

Senator THORVALDSON: Speaking for Manitoba I can say we have been seeking this legislation for many years. It has been passed twice in the Senate, but has always been stalled in the other place where they have difficulty getting work done.

The CHAIRMAN: I take it Part X is approved by the committee?

Hon. SENATORS: Agreed.

The CHAIRMAN: That takes us down to section 22 which contains the interest provisions. Shall that section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: There is one other thing I would like to do before adjourning—

Mr. GREENBLATT: Did you pass over clause 22?

The CHAIRMAN: We did not pass it over, we passed it.

Mr. GREENBLATT: We have a very important suggestion to make. Clause 22 of the bill as drafted could and would, in our opinion, lead to considerable confusion in respect of proposals or bankruptcies pending especially if trustees in pending estates now had to apply the provisions of Bill S-17 dealing with non-arm's-length transactions or reviewable transactions or claims. On the other hand we should like to see the provisions of this bill relating to the wide powers of investigation and prosecution given to the superintendent and official receiver and the obligations of the trustee to report and provide valuable information, be made applicable to pending estates and to proposal of bankruptcies pending or filed before or on the day this bill comes into force. Therefore we humbly recommend that subsection (1) be deleted entirely, and that subsection (2) of clause 22 of the bill be amended as follows:

This act does not apply to proposals filed, assignments made and receiving orders granted before the day this act comes into force, but subsection 9 of section 3, section 3A, section 3B, subsection 14 of section 9,

section 120, section 128A and section 163A thereof shall apply to proposals and bankruptcies pending or filed before or on the day that this act comes into force."

The CHAIRMAN: What do you say, Mr. Tassé?

Mr. TASSÉ: I do not see really the problems Mr. Greenblatt is alluding to. I would feel sorry that these provisions of Bill S-17 would not apply to these bankruptcies that are filed or have been filed or may be filed until these provisions become law. I think for example, that if it is considered that a proposal should be deemed to be an assignment when it is not ratified by the court or approved by the creditors, this should be the case as soon as the act becomes law, and I cannot see why this should not apply to the proposals that have not yet been dealt with when the act becomes in force. I cannot see the point of delaying the application of these provisions until the time the act becomes law and make them applicable only to these proposals which would be filed after the act is passed.

It must be stressed however that the act will not affect any order, rule, proceeding, action, matter or thing done, made, competed or entered into under the Bankruptcy Act before the day the act comes into force.

The CHAIRMAN: These seemed to be reasonably precise provisions, and if any confusion results in the working out of them we may have to face that possibility. I am inclined to agree with what Mr. Tassé says. Is the section approved of in the form in which it is?

Hon. SENATORS: Carried.

The CHAIRMAN: We are going to have to reconvene this committee at 2 o'clock for one item, but there are three items with which we might deal now. We stood four sections last time we met. In respect of three of them amendments have been drafted, and I think have been concurred in by Mr. Tassé. The first deals with paragraph 32B page 7. That has been redrafted, and it covers the situation that if the creditors refuse to accept a proposal from an insolvent person he then becomes bankrupt. The suggestion was made that if you have a representative meeting of creditors at which they refuse to accept the proposal, then the meeting could be turned into a meeting of the creditors under section 68 of the Bankruptcy Act, and in order to save the expense of calling another meeting, if you have them there you can make use of them. Do you approve of that in principle?

Mr. TASSÉ: Yes, I do.

The CHAIRMAN: I have the wording of it and I can read it if you wish. All parties have agreed to the drafting of it—our Law Clerk, Mr. Tassé, and I, and I think some other people in the Department of Justice.

Mr. TASSÉ: Yes, that is right.

The CHAIRMAN: In those circumstances, do you want me to read it?

Hon. SENATORS: No.

The CHAIRMAN: So, is it agreed that with regard to section 7, on page 7, it is to be amended by deleting paragraph 32B and substituting a new paragraph 32B.

Hon. SENATORS: Agreed.

The CHAIRMAN: The amendment reads:

Page 7: Strike out lines 13 to 23, both inclusive, and substitute the following:

32B. (1) Where the creditors refuse to accept a proposal by an insolvent person a copy of which has been filed with the official receiver

as required by section 35, the debtor shall be deemed to have made an assignment on the day the proposal was so filed; and the trustee shall either

- (a) forthwith call a meeting of the creditors present at that time, which meeting shall be deemed to be a meeting called under section 68; or
- (b) if no quorum exists for the purposes of paragraph (a), call a meeting under section 68 as soon as practicable;

and at either meeting the creditors may, by ordinary resolution, notwithstanding subsection (1) of section 6, appoint or substitute another licensed trustee for the trustee appointed under the proposal or affirm the appointment of that trustee.

(2) Where the creditors refuse to accept the proposal described in subsection (1), the trustee shall forthwith file a report thereof in the prescribed form with the official receiver and the Superintendent; and the official receiver shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 26.

The CHAIRMAN: The next one was section 8. Section 8 deals with the same situation where the court refuses to approve. In other words, the creditors have approved of a proposal but the court refuses to approve. In those circumstances we have provided for the procedures that shall follow.

This involves striking out paragraph 10 on page 8 and substituting therefor a new paragraph 10, 11 and 12. I can read it to you. It says:

(10) Where the court refuses to approve a proposal by an insolvent person a copy of which has been filed under section 35, the debtor shall be deemed to have made an assignment on the day that the proposal was so filed and the trustee shall forthwith call a meeting of the creditors under section 68, at which meeting the creditors may by ordinary resolution, notwithstanding subsection (1) of section 6, appoint or substitute another licensed trustee for the trustee appointed under the proposal or affirm the appointment of that trustee.

(11) Where the court refuses to approve the proposal described in subsection (10), the trustee shall forthwith file a report thereof in the prescribed form with the official receiver and the Superintendent; and the official receiver shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purpose of this Act as an assignment filed pursuant to section 26.

(12) No costs incurred by a debtor on or incidental to an application to approve a proposal, other than the costs incurred by the trustee, shall be allowed out of the estate of *the debtor* if the court refuses to approve the proposal.

Shall that be carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Page 9 is the next one. At the top of the page we stood subparagraphs 4 and 5, and we are now proposing as a redraft the following:

(4) Upon the proposal being annulled, the debtor shall be deemed to have thereupon made an assignment and the order annulling the proposal shall so state.

(5) Where an order annulling a proposal has been made, the trustee shall forthwith call a meeting of the creditors under section 68, at which meeting the creditors may by ordinary resolution, notwithstanding subsection (1) of section 6, appoint or substitute another licensed trustee for

the trustee appointed under the proposal or affirm the appointment of that trustee.

(6) Where an order annulling the proposal described in subsection (5) has been made, the trustee shall forthwith file a report thereof in the prescribed form with the official receiver and the Superintendent; and the official receiver shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 26.

Hon. SENATORS: Agreed.

The CHAIRMAN: Those are three out of the four paragraphs we stood. The other one we stood was one which related to clause 3 on page 4 of the bill. In connection with the right of seizure of books, records, et cetera, and taking possession of them, we considered the insertion of a provision in relation to solicitor and client privilege. At the level of our Law Clerk, the Superintendent of Bankruptcy, and the Department of Justice, there have been some efforts made to resolve that. They have not arrived at a draft which I can say is acceptable to all those people. I think it is a matter on which we could usefully have some discussion. In regard to some parts of it the chairman has some very strong views, and I think perhaps the members of the committee have. I suggest that we reconvene at 2 o'clock and discuss that particular item then. Maybe at that time I can tell you what the Department wishes and what I would suggest, and we will try to get the views of the committee. Is that agreed?

Hon. SENATORS: Agreed.

The CHAIRMAN: We will resume at 2 o'clock.

Upon resuming at 2 p.m.

The CHAIRMAN: Honourable senators, when we adjourned one item was left over, and that related to clause 3 of the bill. Clause 3 contains a new section which gives very special investigatory powers to the Superintendent of Bankruptcy.

The question that was raised at the time we were going over the bill, and for which reason we stood this section, is a question of solicitor and client privilege in relation to the power that is given the Superintendent of Bankruptcy to go into any premises or building to seize books, records, et cetera, and to take them away for purposes connected with this act and his investigation. This is the one item on which, in any discussions which we have had since our last sitting, we have not reached common ground as between what I might call my viewpoint and the viewpoint of the Superintendent of Bankruptcy and the Department in reference to how far the solicitor and client privilege should be provided for.

May I take just a minute in which to tell you what the situation is. Under the new section 3A, subsection (2), which is on page 4, the Superintendent, for the purposes of an investigation, or any person duly authorized by him in writing, with the approval of the court, which may be given upon an *ex parte* application, may either alone or with such peace officers as he thinks he needs go in and search by force, if necessary, any building, premises, et cetera and take books and records that may afford evidence as to an offence in connection with a bankruptcy, and to seize and take away any such books and records, and retain them until they are produced in court. That is what is proposed here.

In connection with the Income Tax Act, sections were added some years ago dealing with the matter of solicitor and client privilege. There the minister has the power of investigation and of going in and seizing records et cetera, and taking them away, and there is a procedure, if solicitor and client privileges are claimed, for determining that, and the solicitor or client can serve a notice of motion. In the meantime all the records are sealed. The Crown does not have a

look at them. The matter is by notice of motion referred to a Judge of the Superior Court or the Supreme Court of the province concerned for determination of whether there is a privilege or not. Fifteen days are provided in which service of that notice can be made, and then the hearing has to take place, unless the parties consent to a longer period, within 21 days thereafter—that is, a hearing to determine whether or not a solicitor and client privilege exists in relation to any or all, or any part, of those documents. Following that there are all the rights of appeal that exist following the order of the judge. That has gone some distance.

Then, in connection with the Combines Investigation Act the proper officers are duly armed with the authority to go in and seize records and—this is a noteworthy situation—examine them on the premises, make copies, and take away the copies, or if they decide that the documents or some of them require further examination they can take those documents away. Under the Combines Investigation Act they must within 40 days return the originals, which means that in the meantime they have made copies, and those copies would have all the force of law as far as their introduction as evidence is concerned as the originals would have.

It seems to me that there are really two questions. One is the direct question of solicitor and client privilege, and the other the question of the availability of documents, and so on, to the holder of them for the purposes of carrying on his business.

What brings this very forcibly to my mind is that recently in Toronto under the Income Tax Act provisions, and armed with the authority to go in and seize documents, etc., a group of quite a number of persons, under an order of the Exchequer Court, at the instance of the minister, went into one of the largest chartered accountancy firms in Toronto, and took everything. They brought in cartons, piled into them every book, record, piece of paper in the premises and took them all away. You can imagine the chaos resulting in the operations of a large accounting firm.

Several years ago they went into the offices of a firm of solicitors in Toronto and piled everything into cartons, even including pencils, erasers, and records that went back 30 or 40 years. This made me think that there must be some middle course between going in and taking possession, even of current files, so that the business is at a standstill, yet serving the purposes of justice and having regard to the objective, that is, the enforcement of the act, in this case the Bankruptcy Act.

I have two suggestions. One is in relation to records, if the power of seizure exists. When they go in, I think the powers should be something akin to that under the Combines Investigation Act, that is, that they make their examination on the premises and examine the records; and when, as they often do, they have a little portable copying machine, in some instances making copies and leaving the originals, if they should take away the originals for further examination, I think at that point either the departmental offices should provide copies or that there should be an opportunity to the owner to provide himself with copies; otherwise you will put him out of business for the time being.

That is quite apart from the solicitor and client privilege, but I think something of that kind is necessary if you are not going to have situations develop of the kind I have described to you today.

I am not suggesting in anything I say that Mr. Tassé, so long as he is the Superintendent of Bankruptcy would behave in that fashion. However, I think he agrees with me that when we are looking for provisions in a law, you do not put them in on the basis that they are all right because we have regard to the

person administering them; because you do not know who the administrator will be.

On the question of solicitor and client privilege, the objection to incorporating the provisions in the Income Tax Act seems to be that you get into an interminable procedure that might run on for a year before the records in respect of which solicitor and client privilege has been claimed become available, or the decision that they are not available becomes finally settled so far as that particular case is concerned; and it may seriously interfere with the particular job which is being done. That objection seems to flow from the fact that the time limits are long, and then there are all the rights of appeal.

I had two ideas in that regard, if those provisions that are in the Income Tax Act are incorporated. If the Superintendent of Bankruptcy comes in, sees a certain record, and solicitor and client privilege is claimed at once, then if instead of, as under the Income Tax Act taking 15 days in which to give notice, the time were reduced to five days, and instead of having 21 days after that in which to bring on the hearing, another five or ten days were allowed, and an opportunity to have privilege settled by a judge, were given, whatever his decision is either way, that would be the end of it. That would meet any suggestions that the procedures under the Income Tax Act interfere and delay for too long the purposes they are attempting to serve.

The alternative I had in mind and now suggest is that you would not interfere at all with the seizure, or so far as solicitor and client privilege is concerned. That would be asserted if there were any proceedings or any prosecution thereafter and a document was presented in respect of which a claim of solicitor and client privilege was made. Then the judge hearing the case would make his decision. The place where that would be asserted would be if there were any proceedings or any prosecution thereafter and if a document were presented in respect of which a claim of solicitor and client privilege were made. Then the judge who was hearing the case makes the decision whether it is a privilege or not. If he says it is a privilege, it is inadmissible as evidence.

Those are two courses that I suggested but I have not had any agreement.

Now, would you like to address yourself to the problem, Mr. Tassé?

MR. TASSÉ: Thank you, Mr. Chairman. With regard, first, to the problem related to the possibility that as a result of a search, the operation of a business or an office may be disrupted, I must say that this is not a new problem and it has arisen with respect to other acts. You, Mr. Chairman, have explained the provisions of the Combines Investigation Act. This act was enacted in 1953-54. The problem arose again in 1958, when Parliament enacted the Estate Tax Act. There were extensive powers given to the Minister of National Revenue for the purpose of the enforcement of that act. There was a provision that was devised and it was felt that it was a better compromise between the interests of the individuals and that of the enforcing authorities than were the provisions of the Combines Investigation Act.

Again in 1964-65, when the Canada Pension Plan was enacted, there were very extensive powers given to the Minister of National Revenue, I believe, powers similar to those that are not given to the superintendent in section 3A or that were given to the Minister of National Revenue for the purpose of the Income Tax Act.

At that time a committee comprising a representative of all political parties was set up to study the problem. The experience gained under the Income Tax Act, as well as under the Combines Investigation Act, was considered. It was felt that the provisions which had been put in the Estates Tax Act were the best compromise that could be devised between the conflicting interests of the persons whose documents are seized and of the public authorities. These are the

provisions that were accordingly incorporated in the Canada Pension Plan. The provisions that we have in subsection 7 of section 3A of the bill are almost word for word the provisions that I have just referred to. Under the provisions of section 3A(2) it would be possible for the superintendent's office to make a search and to take away documents. But there is also a provision, subsection 7, enabling the superintendent to make copies, and if there are copies made and the person from whom those documents were seized requests to be provided with a copy, the superintendent will have the duty and obligation to give a copy of the document to that person.

If for a number of reasons, practical reasons, it is not possible to make copies—for example, because there are too many documents and it is not possible or practical to make copies of all of them, then the section provides that the person from whom those documents were taken away shall have access to those documents at any reasonable time. Access means reasonable access because unreasonable access would be no access at all. For example, if the search was made in Vancouver and the documents were kept in Ottawa, the superintendent could not go to that person and say: "You come to Ottawa and you will have access to those documents." A reasonable access would have to be given to the party, otherwise there will be no access. In such a case, the party could presumably petition the court to obtain access.

This provision is not the same as that which we have in the Combines Act.

A delay is provided for in the Combines Act and the documents that are taken away are to be returned within 40 days. But what happens during that 40 day period? These documents are in the hands of the seizing officer and there are no provisions giving the party access to them. I suggest that the compromise which has been evolved and which resulted in this provision, subsection 7, is a valuable compromise. It takes into account the interest of the party whose documents have been seized and also the interest of the public authorities who are investigating possible offences.

This is what I had to say in respect of the protection that should be afforded and that, I think, we ought to afford, to those persons whose premises are being searched.

THE CHAIRMAN: Let us deal with that now, Mr. Tassé, before we move into the solicitor and client privilege. It is true that in 1958 when we considered the Estate Tax Act here we raised the question then of the basic unfairness that might result under the authority that existed to go in and seize documents and take them away and retain possession of them even though access could be had to them within a reasonable period. What is now in the Estate Tax Act is the compromise we were able to work out in this committee with the then Minister of Finance under which it was agreed that if they took the documents away they would furnish copies. But there is a lapse in the period between the seizure of the documents and the possibility of getting a copy.

At that time the committee felt that there were so many beneficial things in the new Estate Tax Act that rather than risk the possibility of losing these it was considered that we should go along with this compromise, but my understanding, as chairman of the committee at that time, was not that this provision in the Estate Tax Act was a provision that we felt moved ahead so far that it met all objections. I think the basic objection of which we must not lose sight is that you are seizing books which may furnish evidence of an offence under an act, and if you are exercising any judgment when you go into an office and take every file out of the office, some regard should be had for the rights of the person, a law office or an accountant's office to permit him to carry on business. That is why we feel that the provision which is incorporated here and which is taken out of the provisions in the Estate Tax Act does not go far enough, because under the proposed legislation the officers can go in and seize every

record and every document and take them away. In due course they may deliver copies or give access to them, but in the meantime the accountant or the lawyer is out of business if he has not got his current files and it may turn out that there is not a thing in any one of the current files. That is why I suggest that if the making of copies at the time presents problems all the Superintendent of Insurance has to say when he goes in there is "I want to take these original documents; I am not prepared to make copies." All you say then is "Before you take these original documents away to retain them in your possession you must give the owner the opportunity to make copies." That is the suggestion made on that part.

Senator VIEN: Did I understand the Superintendent to say that they would tell any person who wants the copies of these documents to come to Ottawa and take notice of them?

Mr. TASSÉ: It was exactly the reverse. My interpretation of this section is that reasonable access should be give to these documents to these persons from whom they were taken away.

Senator VIEN: Could there be the provision made that upon application these documents would be photographed and photographic copies sent to the applicant?

Mr. TASSÉ: The problem is that in some cases this would be a worthless job and it might involve a tremendous amount of unnecessary work.

Senator VIEN: It is surely a tremendous job for an interested party to have to come to Ottawa to take notice of these copies.

Mr. TASSÉ: That is my point. I say it will not be necessary to come to Ottawa. If the seizure is made in Toronto, for example, I feel access should be given in Toronto. There should be reasonable access; otherwise it is no access at all.

Senator VIEN: Could there be a provision made that upon application photographic copies be sent to the applicant at his expense? For instance, if I appear for a creditor and I want copies of these documents, I should be allowed to ask for a copy, and a photographic copy at my expense might be sent to me in no time. As you know, photographic appliances can make 10 or 20 or 50 copies of it in very short order.

I may have misunderstood what the Superintendent said, but I would like to facilitate the access to these documents without having to come either to Ottawa, Montreal or Toronto. If I apply to the Superintendent, he should give instructions that these documents be photographed and copies sent to the applicant, at the applicant's expense.

Mr. TASSÉ: I think this would be done in the ordinary way without any need for an application being made to the court.

Senator VIEN: If you want to make the Bankruptcy Act workable in the public interest as well as in the interests of the creditors you have to take the necessary steps to have that service organized and properly carried out, in my opinion.

The CHAIRMAN: Senator, what you have said is exactly in line with what I have been saying, except I say that the owner should be given the opportunity of making a copy right in his office before the original leaves his office.

Mr. TASSÉ: I do not think there would be any problem of this sort. We should not assume that the officials would be unreasonable. I understand that under the Combines Act this is done every time there is an investigation; they do not copy the documents on the premises. But now, with the advance and development of new machines, the person whose offices are being searched, may ask to copy the documents to be taken away, and there is no problem. I do not think this should present any problem.

Senator VIEN: I am not particularly concerned as to the methods adopted, provided that service is organized and that any applicant can get a copy in short order. I think it would be worth while in the public interest that such a service be organized one way or the other.

Senator FLYNN: Both ways.

Mr. TASSÉ: Then, possibly, there could be an additional subsection providing that a copy should be provided if there is a court order.

Senator VIEN: The amounts involved justify it and if we all want to lend a hand in solving the problem that arises in that particular respect, I think some steps should be taken and we should not fall back on the excuse that it is difficult to provide copies to applicants.

Senator FLYNN: Is that a specific proposal, Mr. Chairman?

The CHAIRMAN: No, because we did not get that far. The proposal I made is in line with what Senator Vien has said, except I am being a little more specific and I say I should not be deprived of documents which I need to carry on my business, even though they are seized, without being given the opportunity to make a copy myself, if the seizing officers do not want to provide a copy right at the time.

Senator VIEN: You are asking for a creditor most of the time—sometimes the debtor or creditor, but the creditor most of the time who wants copies of the documents that have been filed with the custodian—it seems to me it should be the organization of the Superintendent or other custodian to deliver copies at a court. If a document is filed at the court, then I ask for a copy and I can get a copy from the court. It seems to me in a matter of bankruptcy, when time is a very important factor, the department should be provided both at Ottawa and in other large cities with the appliances to make copies rapidly at the expense of the applicant. I would not like to crowd the estate in bankruptcy with the expense of making those copies, but I think the service of the Superintendent both at Ottawa and elsewhere in large cities should be given the necessary copying appliances to cope with the demands of the creditors. I am not particularly concerned about the method—whether it should be the creditor or the office of the Superintendent.

The CHAIRMAN: What I had in mind, senator—and this is a real question—is if the Superintendent of Bankruptcy in connection with an existing bankruptcy decides that there may be evidence in a legal office in relation to the matter and under proper authority he goes in and seizes everything, then if he takes everything away he is putting the lawyer out of business for the time being. The chances are if there is anything relevant it will be an infinitesimal part of all the records, and yet the lawyer is deprived of all his records. All I am saying is if at the time of the seizure the Crown is not prepared to furnish copies then the lawyer or the possessor of the documents, as the case may be, may say: "I want to make a copy of a document", and if he does so then the document should be made available to him for the making of the copy.

That is not a new procedure because when a document is in the possession of Crown officers under a variety of acts, and you want a copy, they will bring the document to the place where you are going to have it reproduced. You can then have it reproduced, and they take it away again. All I am saying is that if there are current files among the documents they have seized then you should be able to say: "I need them in order to carry on my business, and I want to make a copy now". I am saying that you should have that right.

Senator FLYNN: Do you think that that will prevent the seizure of all the documents?

The CHAIRMAN: Yes, I think they will exercise some discretion in the selection, as is done under the Combines Investigation Act. In that case they

examine the documents right on the premises, and ordinarily they might take only a small fraction of all the documents there.

Senator VIEN: If the two ideas were combined I think it would be in the public interest.

Mr. TASSÉ: With respect to the copying of the documents on the premises, I would point out that although this is done under the Combines Act there is no such provision in that act. I do not think it is something that ought necessarily to be embodied in this act. There are practical problems.

The CHAIRMAN: I think in order to be sure in connection with a matter as important as this it has to be put in the statute, especially when we are in the process of drafting it. Somebody afterwards might say, "You have discussed all this, as *Hansard* indicates, but you have decided you did not need to put it in the statute".

Senator VIEN: Could we give the Superintendent instructions to redraft this section so that it provides what has just been outlined?

The CHAIRMAN: We cannot do that because he is under authority. What we can do is ask our law clerk to draft something, having in mind our discussions. We can then get together with the Superintendent and the Department of Justice to see if they agree with what has been drafted.

Senator VIEN: Then I so move, Mr. Chairman.

The CHAIRMAN: Is that the view of the committee?

Hon. SENATORS: Agreed.

The CHAIRMAN: The other aspect is that of solicitor and client privileges. What have you to say about that, Mr. Tassé?

Mr. TASSÉ: There are a number of points I would like to make about this matter of protecting the solicitor and client relationship. The first one is that the situation that is contemplated under the Income Tax Act, in my view, is quite different from the one that is contemplated under section 3A. I am informed that this suggestion that the provisions of section 126A be incorporated in the Income Tax Act arose as a result of a search that was made of a lawyer's office, and it was felt that there was a possibility, since all lawyers were taxpayers, that investigation and search of lawyers' offices could be made with a view to finding out whether the clients were disclosing all of their revenues. This was the main concern of the proponents of section 126A. It was felt that one means of preventing this was to incorporate in the Income Tax Act some provision that would extend to the search, the protection that is afforded to communication between clients and solicitors. We must not forget in that respect that the privilege is the privilege of the client, not of the solicitor, and it only means that communications passing between the solicitor and the client are not admissible in evidence unless the client gives away the right to non-disclosure. So that the provisions of section 126A are really carrying the protection a step further when it extends it to the investigation or searching stage.

I think another important difference from the situation contemplated by the Income Tax Act is that under this act the minister may, for any purpose relating to the administration of the act—he is not restricted in the purpose of his search—exercise the various powers described in section 126.

Under this bill, and section 3A, there would be a search if there are reasonable grounds for suspecting that an offence has been committed, and it has to be in relation to a specific bankruptcy. In other words, the situation contemplated by section 126A of the Income Tax Act where a lawyer could be investigated personally, presumably, as might be feared, for the unavowed purpose of getting to the clients, would not arise. A lawyer's office could, of course, be searched under the provisions of Bill S-17 in respect of a specific

bankruptcy, after the approval of the court has been obtained, and it is, the documents relating to that specific bankruptcy that could be taken away.

In my view, the incorporation in the Bankruptcy Act of provisions similar to section 126A of the Income Tax Act is not warranted and is not necessary and would, I am afraid, defeat the purpose and objective of section 3A, which is to give extensive powers of investigation. I do not think that an extension of the protection surrounding the solicitor-client relationship is warranted. I must say in that respect that it is a protection that will still be available to the client if there is a case before the court following a search and an investigation. If the prosecuting authorities want to put something in evidence that is privileged communication, then the client will just have to raise the objection and the court will decide on it. The privilege goes only to the admissibility of the document or communication.

The CHAIRMAN: I do not think that is the law.

Mr. TASSÉ: I do not think any good would be done by incorporating these provisions in the act, and I think it would be defeating the purpose and objective of section 3A.

This has been discussed inside the department and with the minister, and the minister has asked me to inform the committee that he has great reservations about the incorporation of such provisions in the Bankruptcy Act.

The CHAIRMAN: Of course, we always pay attention to questions of policy, but we also have a duty to perform in relation to the statute that is going to operate in many areas of the public domain. What we are suggesting does not interfere with its operation at all.

If you say the provisions in the Income Tax Act are not properly applicable to the kind of situation we would have in the Bankruptcy Act, if it were necessary to argue the point, I think I could point out to you that there is no difference, but it seems to me the other aspect is enough. You say that when you go in and seize the documents, or perhaps documents from where solicitor and client privilege exists, but if a court proceeding results that solicitor and client privilege will be recognized in the court proceedings. I am not prepared to accept that as a matter of law, and I think therefore there should be some provision in the statute to say that the judge at the trial where such evidence is presented is entitled to rule on the question of privilege, and if he says privilege does exist then the document is inadmissible.

Now, we are not as far apart except that Mr. Tassé would have me say this is the general law now. I am not prepared to accept that, and therefore I cannot accept the other statement that if you got into court and raised that issue the judge, if he decided it was privilege, would say it is inadmissible. This is the opportunity to say so in the statute.

Mr. TASSÉ: If we incorporate the provisions of the Income Tax Act, this would be what the judge would have to do, that is, to decide whether the document would be admissible, because if we look at section 126A, this is what he has to decide when the document is a privileged one.

The CHAIRMAN: Yes, except that in doing so, the alternative I have suggested allows no problem of delay. You have made your seizure, obtained all your documents and studied them and started your proceedings in court, and during the course of the trial the judge is called upon to make his ruling, just as he will make a number of other rulings, so there is no question of delay.

Senator VIEN: Is that amendment in order?

The CHAIRMAN: I am putting this forward. We have not reached the stage of drafting. I do not know if you go along with the suggestion that we should try to draft it. On the question of what the minister's attitude is, we would be in a better position to canvass that if we had something tangible as to

the kind of amendment that is being suggested. The first thing we should do is put the kind of amendment that the committee thinks should be in there, in draft form, and then submit it.

Senator VIEN: I would suggest that that should be the procedure. I so move, Mr. Chairman.

The CHAIRMAN: Is that the wish of the committee? This is not forcing something on the minister but it is crystallizing our thoughts in relation to this matter. Then, if he wishes, he can come over here and discuss it with the committee. Is that agreed?

Hon. SENATORS: Agreed.

The CHAIRMAN: Those are all the items, and the committee adjourns.

The committee adjourned.



First Session—Twenty-seventh Parliament

1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 8

Complete Proceedings on Bill C-152,
intituled: "An Act to amend the Agricultural Rehabilitation
and Development Act".

TUESDAY, MAY 10, 1966

WITNESSES:

Department of Forestry: A. T. Davidson, Assistant Deputy Minister;
R. R. McIntyre, Chief, Soil and Water Conservation Division.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE
the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Hugessen	Reid
Blois	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Queens-</i>
Choquette	Kinley	<i>Shelburne</i>)
Cook	Lang	Taylor
Crerar	Leonard	Thorvaldson
Croll	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Davis	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McKeen	White
Fergusson	McLean	Willis—(49).
Flynn	Molson	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, May 5, 1966:

"Pursuant to the Order of the Day the Senate resumed the debate on the motion of the Honourable Senator McDonald, seconded by the Honourable Senator Basha, for the second reading of the Bill C-152, intituled: "An Act to amend the Agriculture Rehabilitation Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Argue, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, May 10th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Beaubien (*Bedford*), Beaubien (*Provencher*), Benidickson, Blois, Burchill, Croll, Dessureault, Fergusson, Flynn, Gershaw, Gouin, Haig, Hugessen, Irvine, Isnor, Kinley, Leonard, Macdonald (*Brantford*), Molson, Pouliot, Smith (*Queens-Shelburne*), Taylor, Vaillancourt and Walker. (27)

On Motion of the Honourable Senator Croll it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-152.

Bill C-152, "An Act to amend the Agricultural Rehabilitation and Development Act," was considered.

The following witnesses were heard:

Department of Forestry:

A. T. Davidson, Assistant Deputy Minister. R. R. McIntyre, Chief, Soil and Water Conservation Division.

On Motion of the Honourable Senator Flynn it was Resolved that the said Bill be reported without amendment.

At 11.00 a.m. the Committee proceeded to the next order of business.

Frank A. Jackson,
Clerk of the Committee.

Addendum: The attendance at the resumption of the meeting of Wednesday, May 4th, 1966, at 2.00 p.m. was as follows:

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Provencher*), Benidickson, Blois, Burchill, Cook, Crerar, Davies, Dessureault, Flynn, Gouin, Haig, Irvine, Lang, Leonard, Macdonald (*Cape Breton*), McKeen, McLean, Pouliot, Taylor, Thorvaldson and Vaillancourt. (23)

REPORT OF THE COMMITTEE

TUESDAY, 10th May, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill C-152, intituled: "An Act to amend the Agricultural Rehabilitation and Development Act," has in obedience to the order of reference of 5th May, 1966, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, May 10, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill C-152, to amend the Agricultural Rehabilitation and Development Act, met this day at 10.00 a.m. to give consideration to the bill.

Senator SALTER A. HAYDEN in the Chair.

The CHAIRMAN: Honourable senators, the departmental witnesses are here to deal with ARDA; the Agricultural Rehabilitation and Development Act. They are Mr. A. T. Davidson, Mr. R. R. McIntyre, Mr. L. E. Pratt and Mr. P. L. Boisclair. This bill has been dealt with in the Commons. Does the committee feel there should be a *Hansard* report?

Senator CROLL: It is a Government bill, and I move that a record be taken.

The committee agreed that a verbatim report be made of the committee proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the Committee's proceedings on the bill.

The CHAIRMAN: Honourable senators, we have before us Mr. A. T. Davidson, Assistant Deputy Minister, Department of Forestry. He is going to begin the discussion with a short statement of the purposes of the bill.

Mr. A. T. Davidson, Assistant Deputy Minister, Department of Forestry: Honourable senators, I believe that Senator McDonald (Moosomin) in introducing the bill in the Senate did give some explanation about the proposed changes. It was found in the operation of the original act, which actually operated very effectively, that there were some areas in the country in which low income prevailed, in the rural areas of the country in which there was some doubt as to whether the act applied or not. Because if you have it before you, the original act was confined in one of its major sections to rural agricultural areas. It was evident that low income problems, problems of rural adjustment, existed in areas such as those in rural Newfoundland, in certain other areas of the Atlantic provinces, in areas along the fringes of settlement in western Canada—for example, the Medicine Indian areas of western Canada—which could not properly be termed rural agricultural areas. So, the bill takes out the restriction of the act to rural agricultural areas, and replaces it with rural areas.

There was also some concern that the use of the word "agricultural" in one or two places in the act might suggest that measures under the act should be confined to agricultural products.

It is clear that some of the problems of low income agriculture cannot be solved by agricultural measures alone, and certainly the income problems of the 300,000 or 400,000 low income non-agricultural people in rural areas cannot mainly be solved by agricultural measures. So, in order to remove any doubt that projects must be agricultural in nature, the word "agricultural" has been taken out of one or two other sections.

I might say in general that the act has proved to be a suitable one. It has proved to be very flexible, with broad powers. It has provided a suitable legislative base on which to mount a broad scale and flexible rural development program. I would think that the rural development program that has been developed under it is as good as any in the western world. I think this speaks well for the original act and its terms.

Nevertheless, as I have said, experience suggested that the kind of programs that were developed under the original act could be effectively applied to meet the low income adjustment development problems in some rural areas that were not essentially agricultural, and certainly they had to be met by projects and programs that were not primarily agricultural in nature. So, I would think the removal of these fairly minor restrictions out of the act improves it as a vehicle for a general rural development program.

The CHAIRMAN: Are there any questions?

Senator SMITH (*Queens-Shelburne*): I have a question I would like to ask, Mr. Chairman. How does the minister obtain approval of funds which are to be used to pay for the projects which are undertaken jointly with the provinces, or the agencies of the provinces? Do you go to Parliament in the form of submitting items in the annual estimates?

Mr. DAVIDSON: Yes, we do, sir.

Senator SMITH (*Queens-Shelburne*): And each one of the undertakings forms part of the whole sum in the Estimates?

Mr. DAVIDSON: Yes. The individual projects are not listed in the Estimates, but there is a general sum for projects, and programs with the provinces, which appears in the annual Estimates.

Senator SMITH (*Queens-Shelburne*): And a list of the projects is available if someone requires it?

Mr. DAVIDSON: Yes, it is. We have a catalogue of projects which we keep up to date. A new one is issued every few months.

Senator SMITH (*Queens-Shelburne*): I should like to say, Mr. Chairman, that this seems to be exactly the same procedure that is followed in respect of the Fisheries Development Act that we discussed the other day.

Senator CROLL: What is the contribution of the provinces?

Mr. DAVIDSON: It is set out in the rural development agreement with the provinces, which is entered into under this act. The cost sharing varies between 20 per cent, being the federal contribution—that is, the federal Government contributes from 20 per cent of the total cost of a project up to 50 per cent.

Senator CROLL: From 20 per cent to 50 per cent?

Mr. DAVIDSON: In the case of certain projects the federal Government pays 20 per cent of the cost of the project. There are other projects in respect to which the federal Government pays 37½ per cent of the cost, and there are others in respect of which the federal Government pays 50 per cent. The large majority, though, are 50 per cent. They are on a 50-50 basis.

Senator CROLL: Is 50 per cent of the cost in Ontario as fair as 50 per cent of the cost in Newfoundland?

Mr. DAVIDSON: Well, sir—

Senator WALKER: Take that question under advisement.

Mr. DAVIDSON: That raises the question of the fiscal capacity of the province to participate.

Senator CROLL: Exactly. When you say that 20 per cent is available basically to everybody, that, I think, is a start, but when you get to 50 per cent you are into the question of fiscal capacity. Are you saying, in effect, that

because of the fiscal capacity of a province a project that may receive 50 per cent in Newfoundland may receive only 37½ per cent in Ontario? Is that conceivable?

Mr. DAVIDSON: No. For a similar type of project throughout the country the cost shares are the same.

Senator CROLL: That is a point I did not want you to make, but you made it. Of course, it may be a matter of policy that is quite out of your hands. I do not want you to comment if you do not feel you should, but the point I make is that a contribution to a vital project in a rural area of a province that has not fiscal capacity may not be fair to that province, although it might well be in respect of a province that may have a similar need but which has fiscal capacity.

The CHAIRMAN: What you are saying, senator, is that you may have a worthwhile project which carries a 50 per cent entitlement in a province and yet the province cannot afford it, and, therefore, it does not get it.

Senator CROLL: That is the other side of the coin. That too comes along. Thank you for your help. The point is made there that they cannot afford to participate because they cannot contribute the 50 per cent originally. What do you do then?

Mr. DAVIDSON: Senator, there is only one exception to this, and that is under the act the federal Government can do research on its own. We have tended to bear the larger proportion of the cost of research in some of the provinces where we believe fiscal capacity is not as great as it is in other provinces. That is, we have more federal research in certain provinces. We are hopeful, I must say, that during the term of the present agreement, regardless of the question of fiscal capacity, that the Atlantic provinces, for example, are going to use all of their allotment. They did not do so under the first agreement, and we were led to believe that fiscal capacity was one of the problems in connection with it. But, the Atlantic provinces are making a very good start in the new agreement. They are certainly abreast of the rest of the provinces in regard to the proportion of the allotment they are using. So, we have every reason to believe they are going to use the allotment during the term of the present agreement, which is from 1965 to 1970.

Senator RATTENBURY: You are referring to the provincial allotments there, are you not?

Mr. DAVIDSON: The total sum available during the term of these agreements—federal moneys for joint programs. The total is \$125 million, and it is allotted to the provinces on the basis of a formula which depends upon the number of low-income people, the total rural population, and so on. In this way, the basic allotment is biased towards the provinces that have more low-income people. However, I realize that that does not answer the question. It is the fiscal capacity of the province to participate. I am simply making the point that it appears that these provinces are going to participate fully during the term of these agreements. I have every reason for believing they will.

Senator RATTENBURY: If a province has not the fiscal capacity then the program does not go ahead?

Mr. DAVIDSON: If they do not have it, yes.

Senator BURCHILL: Whose responsibility is it to initiate projects? Is it the federal or the provincial responsibility?

Mr. DAVIDSON: The province initiates the projects. It is the responsibility of the province to initiate projects. However, there are a good many projects that are discussed between officials right from the time they are first proposed. In other words, we stimulate the provinces to initiate certain kinds of projects, or we promote certain kinds of projects, and we do that by telling them what

other provinces have done. Sometimes we go so far as to lay out certain programs for them, but it is their responsibility to initiate them.

Senator BURCHILL: What has been your experience with the Province of New Brunswick? Have they taken up their allotment?

Mr. DAVIDSON: They did not take it up during the term of the first agreement which was from 1962 to 1965, a period of about two and three-quarter years. I could perhaps give you the figures.

R. R. McIntyre, Chief, Soil and Water Conservation Division, Department of Forestry: They spent less than 50 per cent of their allotment during the term of the first agreement.

Senator CROLL: How big would their allotment be in dollars?

Mr. DAVIDSON: I can tell you what it is for the second agreement.

Senator CROLL: Would you also give us the formula for the \$125 million?

The CHAIRMAN: Do you mean as to how it is allocated?

Senator CROLL: Yes.

Mr. DAVIDSON: Well, the formula is a formula based on the number of low-income farms, and this is based on—let me read it from the agreement.

The CHAIRMAN: From what agreement are you reading?

Mr. DAVIDSON: I am reading from the 1965-70 Federal-Provincial Rural Development Agreement. This is the formula by which the \$125 million is divided between the provinces. There is an initial amount to each province of \$375,000, which provides a base amount to the small provinces. Then, the agreement provides:

- (b) the balance of the allotment shall be calculated according to a formula based on the following factors as recorded in the 1961 Census of Canada, each given equal weight:
 - (i) the rural population of the province expressed as a percentage of the rural population of the ten provinces combined; and
 - (ii) the number of rural non-farm families in the province with a family income less than \$3,000 per year expressed as a percentage of the number of such families in the ten provinces combined; and
 - (iii) the number of farms (excluding residential and institutional farms) with a total capital value of less than \$25,000 and annual sales of farm products of less than \$3,750 expressed as a percentage of the number of such farms in the ten provinces combined.

Presumably it is based on the world population of the number of low-income farmers.

Senator McGRAND: With regard to New Brunswick, what projects have you under way or do you plan to have under way under this new agreement?

Mr. DAVIDSON: Would you like a list of all the projects, senator, or a discussion of the major ones?

Senator McGRAND: Just in New Brunswick.

Mr. DAVIDSON: I can list very briefly for you the projects under the present agreement, and if you would like further information I could then go back over this in the first agreement.

There is a program of installation of tile drainage systems on what are called "viable farms"; that is, these are not based on the marginal farms. Here is a list of the projects:

Installation of tile drainage systems on viable farms.

Assistance to farmers to protect land from erosion—installation of drainage systems, diversion terraces, grassed waterways, construction of farm ponds for agricultural purposes.

Provision of main outlet drainage systems in tidal marshlands and flood plains.

Farm advisory service and assistance for proper woodlot management.

Construction of farm ponds, supply lines and reservoirs for supplemental irrigation purposes; community pumping stations included.

Study of growth potential in 167 communities with more than 500 inhabitants.

Construction of drainage channels for the protection of 4,000 acres of agricultural tidal marshland.

Financial assistance to two regional development groups (French and English) promoting adult education.

Task Force for a comprehensive area development program—northern New Brunswick.

We have together established a joint class force funded by federal funds to draw up a development plan for New Brunswick, which if approved will qualify for funds under the proposed new act for the fund of rural development. The Canada land inventory program applies everywhere in New Brunswick.

Those are the main projects approved under the new agreement.

Senator McGRAND: I understand that the wood lot, which is a very important thing in rural development, comes under the Department of Agriculture rather than under your department; is that right?

Mr. DAVIDSON: The provincial extension program for farm wood lots, yes, and it is shared by us.

Senator McGRAND: Not by the federal Department of Agriculture?

Mr. DAVIDSON: That is right.

Senator McGRAND: What is your program for wood lot development?

Mr. DAVIDSON: They have a group of extension foresters who go and lay out management plans, advise farmers how to manage their wood lots, and also give some assistance on wood lot improvement and trails to wood lots. I think that is the largest program.

Senator McGRAND: Now I want to know what ARDA has done.

Mr. DAVIDSON: ARDA is to provide additional moneys whereby the program was expanded. I think it was doubled in size. They put on perhaps three or four more extension foresters; but it is the original plan simply extended.

Senator HUGESSEN: You have been talking about the agreement, Mr. Davidson. Have you an agreement with each province?

Mr. DAVIDSON: No, sir. We have one general agreement.

Senator HUGESSEN: One general agreement.

Mr. DAVIDSON: An agreement which has been signed by all provinces.

Senator HUGESSEN: With the exception of the terms of reference, you will have to have a new agreement?

Mr. DAVIDSON: No, we can use the same agreement, but will simply apply the same agreement to some areas to which heretofore we could not apply it. There is one general agreement which sets down the general kinds of programs which may be participated in, the cost shares and various administrative matters. The actual agreement refers to what a province proposes as a project on an official form, and that form is signed by the actual ministers. That is the actual agreement. The rural development agreement is set out in a booklet. It is

an agreement in the sense that it is an agreement in principle and provides rather the regulations or framework for the program. The actual project depends on a form which is signed. So there are two levels of agreement.

The CHAIRMAN: Senator Flynn?

Senator FLYNN: I want to ask about the formula which is used for the allotment of the money applying to the ten provinces.

Mr. DAVIDSON: Yes. As a result of this formula the allotment of the \$125 million, in round figures, is as follows: Newfoundland, \$6,893,000; Prince Edward Island, \$3,578,000; Nova Scotia, \$8,953,000; New Brunswick, \$8,364,000; Quebec, \$28,328,000; Ontario, \$25,291,000; Manitoba, \$9,143,000; Saskatchewan, \$14,334,000; Alberta, \$11,461,000; and British Columbia, \$8,650,000.

Senator FLYNN: Over what period of time?

Mr. DAVIDSON: That is the federal contribution over the period 1965 to 1970. It is expected that this would be matched by an equal or greater sum by provincial contribution, because in all cases we do not share 50 per cent of the cost.

Senator FLYNN: Is there a municipal contribution?

Mr. DAVIDSON: In many cases there is a rural municipal government contribution, although it is not required under our agreements. In some cases the federal Government will share in 75 per cent of the total cost of a project. It is our intent that the other 25 per cent would be provided by the municipality or some other local body, but we do not require it. The province may already pay that 25 per cent.

Senator FLYNN: What class of projects qualify for 25 per cent, or for other percentages?

Mr. DAVIDSON: All research projects qualify for 50 per cent federal assistance. All projects of land use adjustment and farm consolidation qualify for 50 per cent. All projects of re-establishment of people qualify for 50 per cent. All projects to place rural development staff in the field and to train such staff qualify for 50 per cent. All research development projects in rural development areas, that is, low income areas, including such things as community pastures, establishment of forests, and requisitional areas, qualify for 50 per cent.

Public information services are 50 per cent. Soil and water conservation with comprehensive watershed development plans, 50 per cent. On individual drainage projects or irrigation renovation projects, for example, which are not part of a comprehensive river development scheme, the federal Government contributes 37 1/10 per cent of the cost.

On land development projects on farms, the federal Government pays 20 per cent. But in most cases the farmer pays a large proportion of the cost. This is land development on the individual farms. So, as you will note, in the majority of projects the federal Government pays 50 per cent.

Senator KINLEY: In paragraph 5 you can make joint agreements with the government of the province or any agency thereof. What would be an agency of a province?

The CHAIRMAN: Maybe something in the nature of a crown company in the province.

Senator KINLEY: I do not know. However, in clause 7 it states:

The minister may, in order to carry out the purposes and provisions of this Act, establish such advisory committees as he deems necessary and appoint the members thereof.

Whom do they advise, the provincial people or you?

Mr. DAVIDSON: They advise us.

Senator KINLEY: But you pay the money to the provincial government. What control have you over that money?

Mr. DAVIDSON: This clause allows the federal minister to establish advisory committees, not jointly with the provinces but on his own.

Senator KINLEY: On his own?

Mr. DAVIDSON: That is right.

Senator KINLEY: When do they function, before he comes to the agreement or after?

Mr. DAVIDSON: There has been a Canadian Council of Rural Development established under the powers contained in the former act. It has been established for about six months now, and it is advisory under the federal minister.

Senator KINLEY: This federal money goes to a province for the purpose of carrying out a joint agreement with the provincial government, and yet you are appointing an advisory committee to tell you what to do. I do not know what its function is.

Mr. DAVIDSON: I see your point, sir. There are a number of things that do lie with the federal Government. One is that we are permitted under the act to do research directly on questions of national interest, so it is one of the responsibilities of the Advisory Council to advise us on what areas of rural problems require research.

Secondly, although it is true that the program can only be implemented through joint agreements with provinces, it is the federal Government that initially does make the proposals as to what the general policy should be. It is true these are hammered out in negotiations with the provinces, but there is a federal position. For example, when this agreement was negotiated we took a position as to what the main rural problem was. We took positions as to what were program approaches which were liable to be most successful. As a result of negotiations with the provinces there were some small changes, but the main structure of the agreement, which set forth what the problem was and what the approaches to it were, remains.

It seems to me exceedingly important that the federal Government has very strong attitudes of its own how best to meet the rural problem. We just do not depend on the provinces proposing anything and us sharing the cost. We take very strong positions as to our best approaches to it, and we need the best advice from all quarters in order to do this.

Senator KINLEY: You cannot deal with individuals or persons within the province?

Mr. DAVIDSON: No.

Senator KINLEY: I can see the reasons for this advisory committee dealing with certain questions, but suppose your advisory committee advises against what a provincial government wants to do?

The CHAIRMAN: It is not done then, unless the province wants to pay for it.

Senator KINLEY: I know, but the dominion Government is sending so much money to the province and gives over control of that money to the provincial government, and the provincial government takes the credit for all the work that is done. I find that nobody thinks the federal Government does anything, and they think the provincial governments do it. It seems to me that in spending other people's money you provide money that other people spend, and that is a little dangerous. I learned that when I was in municipal politics, when we had joint benefits with the government. Everybody wanted to pay as little as they could in and get as much as they could.

The CHAIRMAN: That is human nature.

Senator KINLEY: When you do not tax for money you want to spend it, and it seems to me we are drifting into an economy whereby we are supplying money that goes into the provinces which you are not responsible for spending. This advisory committee is proposed for the purpose of some control, but I do not see what control they would have.

The CHAIRMAN: If this council says the proposed project is not a feasible one, then it does not go ahead with federal money.

Senator KINLEY: After you make an agreement with a province?

The CHAIRMAN: No, you make an agreement in the case of each project.

Mr. DAVIDSON: I can assure you that the federal Government takes quite strong attitudes about what is the best approach and what is not. The only way these attitudes can be maintained is through good information or good advice, or by thinking through what our position is. If our position is sound we find that in many cases we can convince the provinces this is what they should do and not something else.

Senator KINLEY: Agriculture is a joint problem. Some things are federal and some provincial, but agriculture is not in that category. Every county has an agricultural agent of the provincial government who manages the project in the counties. It looks to me as though you are going to have differences of opinion.

Mr. DAVIDSON: Yes, there are such.

Senator CROLL: Did you say to Senator Kinley that we have a finger in the administration?

Mr. DAVIDSON: No, sir. We do not administer directly projects on the ground, but what we do have is a strong voice in the kind of projects that are undertaken.

Senator KINLEY: Yes. As to the allocation of \$125 million, I was looking at the four richest provinces—Ontario, Quebec, Alberta and British Columbia. Would they have taken more money than the amounts allocated if you had made it available to them?

Mr. DAVIDSON: I don't know whether they would have or not.

Senator CROLL: Take Alberta and Manitoba. I am not an expert on their farming capacity and background, but I had always thought Alberta was by far the richer farmwise than Manitoba, and yet the figure is \$2 million more in the case of Alberta. Is there something there that I should know?

Mr. DAVIDSON: I think it is true that average income conditions, at least from a subjective look at them, are much better in Alberta than in certain areas of Manitoba. Nevertheless, the allotment is pursuant to a formula which is based on statistics from the 1961 census, and these are the best comparable statistics we have across the country. It does show there are still large numbers of low-income farmers in Saskatchewan and Alberta.

Senator CROLL: I see what you are getting at, but from 1961 to 1965 Alberta and other provinces, including British Columbia, have made far greater strides than some in that respect, and it would appear that no account has been taken of that. I think your statistics are lagging, because compared to the 1961 census statistics there are far better statistics available now on almost everything else in connection with the farm population. We know because we get them from time to time and we have had them before our committees. It seems to me your 1961 statistics are pretty well outdated.

The CHAIRMAN: You mean you should have a plus or minus differential to apply to these figures?

Senator CROLL: There is a great plus or minus that makes a difference in four years in some of these provinces.

Mr. DAVIDSON: I think any allotment based on statistics at any given time is certainly subject to having some inequalities in it after a period of years.

Senator CROLL: Why the 1961 statistics, when the 1964 statistics are the most up-to-date? That is the point I am making.

Senator MOLSON: I would like to ask to what extent the Province of Quebec has participated in the plan as it exists to date, the present plan?

Mr. DAVIDSON: The Province of Quebec has participated fully. In fact, they were one of the three provinces that did utilize all their allotment during the term of the first agreement. It appears they will utilize all their allotment during the term of the second agreement.

Senator MOLSON: You can foresee that, can you?

Mr. DAVIDSON: I do so only on the basis of what they have done so far.

Senator WALKER: More than Ontario, is it not?

Mr. DAVIDSON: That is true. Ontario did not use all of its allotment.

Senator KINLEY: The provincial government can make an agreement with an individual in Nova Scotia; can it deal with an individual farmer's problems?

Mr. DAVIDSON: Yes, sir, the provincial government can have arrangements whereby they give assistance to individual farmers. For example, they might give assistance to an individual farmer in building farm ponds.

Senator KINLEY: To do what?

Mr. DAVIDSON: To build farm ponds. We, in turn, assist the provincial government in their program, but they assist the individual.

Senator KINLEY: Does that advisory committee advise you about the provincial government's dealing with an individual case in a province?

Mr. DAVIDSON: I do not expect it will. The advisory committee has not been active very long, but it has very wide terms of reference as to what it advises us on. I would expect it to advise us on the major general programs and the emphasis on those programs.

Senator KINLEY: These advisory committees of which there is one in each province—

Mr. DAVIDSON: No, I misunderstood you. The advisory committee I was speaking of is the Canadian Council on Rural Development, which is the advisory body that the minister has established under the authority of that section of the former act.

Senator KINLEY: This says "committees".

Mr. DAVIDSON: It says that the minister may establish such committees. He has up to now established only one.

Senator CROLL: And which is national in scope?

Mr. DAVIDSON: Yes, sir.

Senator HUGESSEN: Mr. Davidson, what checkup do you have on these expenditures? For instance, suppose you agree on a project that is costing, say, \$100,000. Do you agree to pay \$50,000 of that, with the province paying \$25,000 and the municipality \$25,000? What checkup do you have to ascertain that the other parties have paid their share?

Mr. DAVIDSON: The first check is simply an auditing check. The provincial officer in charge of the provincial accounts must certify that this money was spent on the particular project. This is left with the financial control. I assume that our auditors accept the statement of the provincial auditor that the money was spent on that particular project, otherwise we do not share in it, or the invoice does not go forward.

The only other check we have is under a regional administration, the officers of which will—they have been doing very little on it so far, because the regional administrations have just recently been established—go out with the provincial officers and look at the projects in the field and ascertain whether they are doing what was intended when they were approved.

Senator HUGESSEN: You have had no difficulty? You are satisfied that the other parties have paid their share?

Mr. DAVIDSON: I think so. The provincial administrations, to our knowledge, are very competent, and we have every reason to believe when we receive the certification, that the money is spent on those projects. They have their own very close financial control.

Senator GERSHAW: In depressed areas, say, in Alberta where they have been getting the Prairie Farm Assistance every year, they have local committees which recommend certain work. To whom do those local committees report? Who decides on the recommendations?

Mr. DAVIDSON: I am not certain about the P.F.R.A. payments. There are many ARDA committees across the country, and these report to the provincial governments and not to us. There are times when we get minutes of their meetings, but officially they report to some agency of the provincial governments.

Senator GERSHAW: And who decides on whether their suggestions be gone ahead with or not?

Mr. DAVIDSON: The provincial government decides.

The CHAIRMAN: Are there any other questions?

Senator ISNOR: Yes, Mr. Chairman. I was most impressed with what Senator Croll had to say, both yesterday in the chamber and here today, in regard to the comparison between the richer and poorer provinces, and the manner in which they make use of these funds. I am wondering about the formula that is used, and its basis of the 1961 census. The figure quoted by Mr. Davidson today is \$125 million which is shared, roughly speaking, in such a way that 60 per cent goes to four provinces with the remainder being divided between the other six provinces. I wonder if he could give us the formula in different language, and the comparative needs of the various provinces, and an explanation of how these figures are arrived at. I have particularly in mind the Province of Nova Scotia which received \$8,953,000—I think that was the figure quoted—out of the \$125 million. Nova Scotia is one of the poorer provinces. I am wondering if this is a fair distribution of the total amount.

Mr. DAVIDSON: Well, the first factor in the formula is based on the rural population of the province.

Senator ISNOR: The rural population?

Mr. DAVIDSON: Yes, and, of course, the rural population of Quebec and Ontario is relatively much higher than the rural populations of these other provinces. That fact biases the allotment towards those provinces. The other two factors, which are the number of rural non-farm families with a family income of less than \$3,000, and the number of small farms, tend to bias the allotment towards the provinces that have lower rural incomes. During the discussions of the formula with the ministers and with our inter-departmental committee the same kind of view was raised, namely, that it appeared, for example, that the Prairie provinces where you would believe the rural income is fairly good seemed to get a considerable proportion of the allotment. Ontario also seemed to get a considerable proportion of the allotment. The fact is that by the census figures there are relatively large numbers of rural low-income people in those provinces. So, it is just the way the figures fall.

Senator McGRAND: Could you give us a breakdown of the areas into which this money is going? Could you tell me the counties in Quebec where this money is spent? I would then have a better idea of the allotments. Was it spent, for instance, east of Quebec City or west of Quebec City? Was it spent in the sixteen eastern counties of Quebec, or was some of it spent in the area between Quebec and Montreal?

Mr. DAVIDSON: A good proportion of the money was spent in the St. Lawrence lowlands, between Quebec and Montreal.

Senator McGRAND: Then the sixteen eastern counties of Quebec, including the Gaspé, did not get very much of this money?

Mr. DAVIDSON: I think that is true. But let me explain why this would be. The lower St. Lawrence and the Gaspé was established as a rural development area under the first agreement, and somewhat over \$4 million was spent there on research and involvement of the local people in a program for drawing up a development plan for that area. The Quebec Government did not put major inputs into this area until the first development plan was drawn up—this is to be completed this summer—but in the meantime it went ahead with a considerable program in the Abitibi-Lac St. Jean area, and also in the St. Lawrence Valley. The main program, however, on which money was spent in the St. Lawrence Valley concerned drainage channel improvements and drainage systems. They were permitted under the first agreement to spend 50 per cent of their money on this kind of project, and they did so.

The reason it is confined to those areas is that it was intended that the drainage program would be confined to the better agricultural areas so that capital would not be invested in draining land which should not remain in agriculture. So, a lot of the money went into that area between Quebec and Montreal.

Although the other kind of project—the blueberry projects, the community pastures, the attempts to establish livestock herds, and various study and research projects—were concentrated throughout the rest of the province, the major input of manpower was in the lower St. Lawrence. It has not borne fruit in the shape of a program yet, but presumably it will after this year, because there is no question but that the lower St. Lawrence and the Abitibi areas are the poorer rural areas of Quebec.

Senator McGRAND: In what counties of New Brunswick are your projects?

Mr. McINTYRE: From the list of projects that Mr. Davidson read out I think it can be seen that New Brunswick's major input is in regard to improvements of agricultural land, and control of water drainage and pond construction. These projects for the most part have been in the better agricultural areas of New Brunswick, such as Sussex, Westmorland County and, to some extent the northeast part.

The CHAIRMAN: Any other questions?

Senator FLYNN: I should like to point out, Mr. Chairman, concerning the problems raised about this formula here, that even if some form of equalization on the basis of income taxes and corporation taxes is achieved, that may be useful, but it does not always benefit the depressed areas, and it may also not be a good thing to spend all this money in the depressed areas just to give temporary relief. In fact, it may be just a case of water going down the drain. All the problems which have been raised this morning cannot be solved by simply a process of equalization.

Senator ISNOR: Mr. Davidson, does this research program originate in the provinces or in your department?

Mr. DAVIDSON: It originates in two ways. The research is cost-shared under the agreements, and that all originates with the provinces. Sometimes we work

with them on devising projects. However, research originates with them. We also carry on the federal research. The biggest federal research is the Canada Land Inventory.

We also have in certain provinces undertaken the federal cost of research in certain problem areas to determine what were the problems, what were the adjustment needs and potentials for development. These include northeastern New Brunswick, northern Nova Scotia, the inter-lake area in Manitoba and one area in Saskatchewan. We have also carried on some social economic research on the conditions of rural people. One instance is the Eastern Canada Farm Survey; another is the survey on rural poverty conditions. These are federal research projects initiated by us and come from two directions, from the federal Government directly and from the provinces.

Senator KINLEY: Is anything being done with regard to fishermen's holdings; do you deal with that situation? What you said about the Gaspé coast leads me to believe that you do.

Mr. DAVIDSON: When I say that we are dealing with it, we expect the programs are going to be devised in the Gaspé to deal with it, and certainly a program will be devised in Newfoundland to deal with it.

We have one project in the Bonavista area in Newfoundland which has attempted to improve the efficiency of the catch of inshore fishermen. There will be some projects in fisheries improvement in the inter-lake area in Manitoba; they are minor, not basic ones.

Senator KINLEY: Most of the recommendations would come from the provincial authorities, I suppose?

Mr. DAVIDSON: That is true. They come mostly from the provincial authorities. There is a federal fisheries department, so there will be some participation by the federal Government.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Carried.

The committee adjourned.



First Session—Twenty-seventh Parliament

1966

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 9

Fourth Proceedings on Bill S-17,
intituled: "An Act to amend the Bankruptcy Act".

TUESDAY, MAY 10, 1966
WEDNESDAY, MAY 11, 1966

WITNESSES:

Department of Justice: The Honourable Lucien Cardin, Minister;
Roger Tassé, Superintendent of Bankruptcy; E. A. Driedger, Deputy
Minister.

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE
the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Hugessen	Reid
Blois	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Kinley	Taylor
Cook	Lang	Thorvaldson
Crerar	Leonard	Vaillancourt
Croll	Macdonald (<i>Cape Breton</i>)	Vien
Davis	Macdonald (<i>Brantford</i>)	Walker
Dessureault	McCutcheon	White
Farris	McKeen	Willis—(49)
Fergusson	McLean	
Flynn	Molson	

Ex Officio members: Brooks and Connolly (*Ottawa West*).
(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 9, 1966.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Power, P.C., for the second reading of the Bill S-17, intituled: "An Act to amend the Bankruptcy Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL.
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, May 10, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2.00 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Provencher*), Croll, Davies, Farris, Gouin, Isnor, Kinley, Macdonald (*Brantford*), McKeen, Paterson, Pouliot and Taylor. (13)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill S-17, An Act to amend the Bankruptcy Act, was further considered.

The following witness was heard:

DEPARTMENT OF JUSTICE:

Roger Tassé, Superintendent of Insurance.

Amendments to clause 3 were suggested and considered.

At 3.00 p.m. the Committee adjourned until Wednesday, May 11, at 9.30 a.m.

WEDNESDAY, May 11, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Beaubien (*Bedford*), Blois, Burchill, Connolly (*Ottawa West*), Cook, Croll, Davies, Farris, Fergusson, Flynn, Gershaw, Gouin, Haig, Irvine, Isnor, Kinley, Leonard, Molson, Pouliot, Smith (*Queens-Shelburne*), Taylor, Vaillancourt, Walker and Willis. (27).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill S-17, An Act to amend the Bankruptcy Act, was further considered.

The following witnesses were heard:

DEPARTMENT OF JUSTICE:

The Honourable Lucien Cardin, Minister.

Roger Tassé, Superintendent of Bankruptcy.

E. A. Driedger, Deputy Minister.

The following amendments to clause 3, as drafted by Mr. Hopkins, were studied by the Committee:

Proposed amendment to clause 3

Page 5: Immediately after line 37 add as new subsections (8), (9) and (10), the following:

(8) Access to any document referred to in subsection (7) shall be made available at a place convenient to the Superintendent and the person from whom it was seized or by whom it was produced, and such

STANDING COMMITTEE

person shall be entitled, on request, within ten days after such request, to receive without charge from the Superintendent a copy of any such document certified by him or by a person thereunto authorized by him to be a copy made pursuant to this section.

(9) Notwithstanding anything contained in this section, before any book, record, paper or other document relating to a matter or file which has been dealt with at any time within the two years immediately preceding the seizure, examination or production, and which has been seized, examined or produced, may be removed from the premises on which it is so seized, examined or produced, the person from whom the original document was seized or by whom it was produced shall either

- (a) be provided, by the person by whom it was seized or examined, with a copy of such document certified by a person thereunto authorized by the Superintendent to be a copy made pursuant to this section, or
- (b) be given an opportunity by such person, for a period of forty-eight hours following the seizure, examination or production, to make or cause to be made a copy thereof, whether on or off the premises, at the expense of the Superintendent, and to have such copy certified by a person thereunto authorized by the Superintendent to be a copy made pursuant to this section.

(10) Notwithstanding anything in this section, the provisions of section 126A of the *Income Tax Act* apply *mutatis mutandis* in relation to any requirement pursuant to this section to give any information or produce any book, record, paper or other document, as though that requirement were a requirement under section 126 of that Act, and for that purpose, any references in section 126A of that Act to the Minister of National Revenue and the Deputy Minister of National Revenue for Taxation shall be read as references to the Minister and the Superintendent, respectively."

After consideration and discussion, Mr. Cardin requested that he be given time to further study the proposed amendments and also suggested that some members of the Committee meet with him to discuss same with a view to drafting a compromise on the subject matter.

At 10.40 a.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, May 10, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill S-17, to amend the Bankruptcy Act, met this day at 2.00 p.m.

Hon. SALTER A. HAYDEN in the Chair.

The CHAIRMAN: I call the meeting to order.

In connection with Bill S-17 we have left for consideration section 3, and the points that were raised in connection with section 3 have to do with the seizure of documents and the basis under which such seizure may be made, and what must be done in relation to the documents when seized; and also the question of solicitor and client privilege in relation to some documents that are seized.

At the last meeting there was considerable discussion, as a result of which certain instructions were given to our Law Clerk to draft amendments to cover both these points in a manner that was then indicated by the Committee.

In relation to the seizure of documents, which is provided for in section 3 of the bill creating a new section 3A—

Senator FARRIS: Could we have a copy of the bill?

The CHAIRMAN: What I am about to explain are things that are not contained in the bill. In the bill there is the procedure provided under which the Superintendent of Bankruptcy, on the approval of the court obtained by *ex parte* order, may enter on any premises and seize documents which may afford some evidence as to an offence under the Bankruptcy Act, and the authority to take away those documents. Then, in a later subsection of this new section 3A there is provision for the production of copies to the person from whom they have been taken.

The instructions to our Law Clerk on the question of the seizure of documents was this, that the committee felt the basic principle should be that when documents are seized the first examination as to what are relevant and what are not, in the opinion of the seizing officers, should be done right on the premises where seizure takes place.

Senator FARRIS: At the time of seizure.

The CHAIRMAN: Yes, at the time of seizure. And if for any reason the seizing examination, the view of the committee was that a copy should either be provided by the seizing officer or the opportunity should be given to the person who possesses those documents to make a copy before the originals are removed. The Combines Investigation Act goes part of the way on that point. It goes so far as to provide for the sorting out of the documents on the premises. It also permits the seizing officers to remove the originals if they feel they want to make further examination of them; and then, under that act it requires them to return the originals within 40 days. But the feeling of the committee, and here my feeling very strongly was that the possessor of the documents should not be deprived of possession of them without having in place of them a copy at any time.

I indicated some experiences that I have had under the Income Tax Act. For instance, I referred to a seizure under the Income Tax Act when they went into one of the largest accounting firms in Toronto about the middle of this April and seized every book, paper and file, took them all out of their offices, with about 2,000 or 2,500 clients for whom they were obliged to make income tax returns at the end of the month. Under the authority of the act they had the right, in the circumstances, to do that. The only thing they could do would be to try and conciliate to get some current files released.

Then, in connection with a solicitor, several years ago they went into his office and took every file, every piece of carbon paper, every eraser and everything else, and put them in cartons and took them away.

Senator FARRIS: We passed legislation authorizing that?

The CHAIRMAN: Yes, and you were a party to it, senator.

Senator FARRIS: I must have been asleep.

The CHAIRMAN: What I am trying to do now is to dig in at this stage and see with respect to any more bills that come before us that provisions safeguarding the rights of the person in those circumstances are going to be spelled out in better fashion. We have drafted something. I cannot say at this moment it carries the approval of the Superintendent of Bankruptcy and the department that he represents, but we have drafted an amendment to cover this.

Last time Senator Vien raised a question on the right of access to documents after they have been removed from the premises. For instance, a seizure might be made in Vancouver and the nearest bankruptcy office might be in Toronto. So we have drafted an amendment in connection with the access to these documents. The scheme of the amendment requires that documents which refer to a matter or a file which has been dealt with at any time within two years prior to the date of seizure, those original documents must not be taken from the offices where the seizure is made until copies are provided. But then there would be back of that the accumulation of files, and in relation to that we felt the purpose of preserving rights would be served if the person from whom they were seized had the right of access at a reasonable time and place satisfactory to both the Superintendent and the person; and also, on request, he would be entitled to receive copies of these documents from the Superintendent.

So, this is what the amendment provides. May I read this to you, and I will read it slowly. It proposes on page 5, after line 37, which means at the end of subsection 7, we would add two new subsections, 8 and 9. Subsection 8 would say this:

Access to any document referred to in subsection (7) shall be made available at a place convenient to the Superintendent and the person from whom it was seized or by whom it was produced, and such person shall be entitled, on request, to receive without charge from the Superintendent a copy of any document certified by him or by a person thereunto authorized by him to be a copy made pursuant to this section.

That deals with the one phase of access in relation to the documents generally.

Subsection 9 reads:

Notwithstanding anything contained in this section, before any book, record, paper or other document relating to a matter or file which has been dealt with at any time within the two years immediately preceding the seizure, examination or production, and which has been seized, examined or produced, may be removed from the premises on which it is

so seized, examined or produced, the person from whom the original document shall either

(a)—

There is something wrong there, is there not?

The LAW CLERK: Yes, there is something wrong there.

—the person from whom the original document was seized or produced shall either:

and so on.

The CHAIRMAN: A person from whom the original document was seized or who produced shall either

- (a) be provided, by the person by whom it was seized or examined, with a copy of such document certified by a person thereunto authorized by the Superintendent to be a copy made pursuant to this section, or
- (b) given an opportunity by such person, for a period of forty-eight hours following the seizure, examination or production, to make or cause to be made a copy thereof, and to have such copy certified by a person thereunto authorized by the Superintendent to be a copy made pursuant to this section.

The only thing that is missing from that wording in subparagraph (b), and which I think should be there, is the phrase "without charge". In other words, he should be furnished with a copy without charge, the same as we have in subsection (8).

Senator KINLEY: Who will pay?

Senator CROLL: The Government—the people who seize.

The CHAIRMAN: The seizing officer of the office of the Superintendent of Bankruptcy.

Senator KINLEY: It all comes out of the bankruptcy anyway, does it not?

The CHAIRMAN: No, it does not. You see, the way the bankruptcy office is supported—I think so far it has produced enough revenue to support itself, but whether it will in the future I do not know—there is a levy on every estate which must be paid to the office of the Superintendent of Bankruptcy so as to provide a fund for the carrying on of the operations of that office.

Senator FARRIS: I have in my own office a machine that will copy those documents.

The CHAIRMAN: Yes, but presumably these are documents that will not lend themselves to the facilities you have in your office. I have found that in respect of income tax seizures they would send an official with the documents to some commercial place in town and copies would be made, and they then come back with the originals. That is provided for in the Income Tax Act under which the rights of the individual are much less than what I am proposing here.

Senator DAVIES: By documents do you mean the books of the company?

Senator CROLL: They can have whatever they want.

Senator DAVIES: It would be quite a job to make copies of a ledger or the day book of a big company.

The CHAIRMAN: Have you seen these machines work? I could take the Bank Act in, or any of those statutes, and have it reproduced in 15 or 20 minutes.

Senator KINLEY: In less time than that.

The CHAIRMAN: Yes, in less time than that.

Senator DAVIES: Do you mean by photography?

The CHAIRMAN: Well, by Xerography, which is a modern process.

Senator FARRIS: And the seizing officer can do that?

The CHAIRMAN: If he will not make a copy at the time then the person from whose possession the documents are being taken is entitled to have a copy made before they are removed from the premises. He is also entitled to have a copy made without charge to him.

Senator POULIOT: Mr. Chairman, were those amendments suggested by the association that appeared before the committee, or did they come from the Department of the Secretary of State?

The CHAIRMAN: Well, the amendments that I have read are amendments which this committee—

Senator POULIOT: I am referring to subsections 8 and 9.

The CHAIRMAN: Subsections 8 and 9 form the opinion of this committee expressed at the last meeting, and the very forceful viewpoint expressed by the chairman that these provisions are necessary to protect certain rights.

Senator POULIOT: That is, after having heard the evidence given before the committee?

The CHAIRMAN: Yes, that is right. I do not know whether Mr. Tassé wants to comment on this—

Senator CROLL: Before he starts commenting I might say that I am not satisfied with the last portion, because you have not provided what you should provide. No one quarrels with the right to take documents. That is neither here nor there.

The CHAIRMAN: That is right.

Senator CROLL: I have two quarrels. First there is the solicitor-client relationship.

The CHAIRMAN: That is a separate thing.

Senator CROLL: That will be separate, then. But, to walk out with documents without leaving copies of the exact nature in an office is highly improper. There are two things that have to be done. In the earlier part of it you said that the Superintendent will provide him with documents on request.

The CHAIRMAN: No, I said in subsection 8 that once access is given to any document then it should be made available.

Senator CROLL: And if requested, did you not say, he provides him with copies?

The CHAIRMAN: Yes, but to start out basically under this draft when you go into an office and seize documents they fall into two categories—

Senator CROLL: Yes, two years back, and—

The CHAIRMAN: Yes.

Senator CROLL: Let us forget that. I am talking about the other documents. You said that the Superintendent must provide copies on request.

The CHAIRMAN: Yes.

Senator CROLL: But you must put a time limit in there. Suppose the request comes ten months later. It must be made within a reasonable time.

The CHAIRMAN: Instead of saying "a reasonable time" I would rather put in a time.

Senator CROLL: You are putting in 48 hours on the other one, so give him 72 hours here. If he is taking the documents they must be worthy of his attention. Let him get to work within 72 hours.

The CHAIRMAN: I think in relation to those documents which are not current their importance to the continuity of the operation of the business would not be such that you need to unduly shorten the time. Seventy-two hours may not be enough. Perhaps we should say one week.

Senator CROLL: Very well, give him ten days. But I do not want the documents delivered at leisure.

The CHAIRMAN: Maybe we could say "shall be entitled on request within 10 days".

Senator FARRIS: Do you mean the request has to be made within 10 days, or the response to the request must be made within 10 days?

The CHAIRMAN: Within 10 days after such request.

Senator KINLEY: Does he have to give a receipt?

Senator CROLL: Yes.

Senator FARRIS: Why should he get 10 days?

The CHAIRMAN: First of all, the documents we are dealing with in this particular subsection are documents that relate to a period earlier than two years before the date of the seizure, and therefore do not fit into what we are calling the current documents. There may not be the same need to repossess those documents, or have copies made of them, as quickly. It may involve some measure of time to encompass the distance. You have a bankruptcy office in Toronto. If time is not as rushed in relation to those, I would be satisfied to give them a little more time, but with respect to the current files I am not satisfied to give them any time at all because a business cannot operate without its current files.

Senator KINLEY: What if it goes over a weekend?

Senator CROLL: Ten days is lots of time.

The CHAIRMAN: Ten days would give 8 working days anyway, even with a weekend intervening.

Senator KINLEY: Yes, that provides for Saturday and Sunday, but the following Monday may be a holiday, and there you have lost three days.

Senator FARRIS: Mr. Chairman, you are familiar with this work and you have studied it. I would like to take your advice.

The CHAIRMAN: I think 10 days is ample. Would you like me to read this?

Senator CROLL: Yes.

The CHAIRMAN: Subsection (8) reads:

Access to any document referred to in subsection (7) shall be made available at a place convenient to the Superintendent and the person from whom it was seized or by whom it was produced, and such person shall be entitled, on request, and within ten days after such request, to receive without charge from the Superintendent a copy of any such document certified by him or by a person thereunto authorized by him to be a copy made pursuant to this section.

Senator DAVIES: The Superintendent has to make the copies?

The CHAIRMAN: Yes. That is subsection (8). Is that satisfactory?

Senator CROLL: There is the time period.

The CHAIRMAN: I said "on request and within 10 days after such request".

Senator CROLL: All right, that is agreeable. That will work.

Senator FARRIS: Do you consider that the department should be provided with these modern machines that I referred to a moment ago, and that they should make exact copies? On these machines perfect copies are made.

The CHAIRMAN: We have provided that the Superintendent or some person appointed by him certify that the copy is a true copy of the document that is seized. There is a certificate on it.

Senator CROLL: I will move that subsection.

Senator ISNOR: I will second the motion.

The CHAIRMAN: Now that we have that, supposing we just let that stand until we deal with subsection (9).

Senator CROLL: Very well; go ahead.

The CHAIRMAN: Subsection (9) deals with the situation where you have what I call current documents and files. The effect of subsection (9) is that those documents, while they are seized, may not be removed from the premises at which they have been seized until such time as the person in possession of them at the time of seizure is provided with a copy without charge to him.

Senator CROLL: We are going to get into a little trouble here. Let us take the case of a modern office, say a solicitor's office, which has a Xerox machine and the copies are made right on the premises. Then let us take the case where they have not such a machine and have to get copies made elsewhere. To provide for that, I think there should be some wording to the effect that by consent they may take the documents to a place which provides that service.

The CHAIRMAN: What we will say is that there shall be given an opportunity by such person for a period of 48 hours following the seizure, examination or production, to make or cause to be made a copy thereof, and to have said copy certified, etc., by the Superintendent without charge to him.

Senator CROLL: We are talking about different things, Mr. Chairman.

The CHAIRMAN: No.

Senator CROLL: Let us suppose that the seizure is made right now. Here are the documents. Who makes the copies?

The CHAIRMAN: Either the Superintendent, or the person whose documents they are.

Senator CROLL: Stop right there. There are no facilities on the premises to make copies, and you have to take them off the premises for the purpose of making copies. At that moment you need consent to take the documents off the premises, because they belong to both sides. If there is consent they can be taken off the premises for the purpose of making copies.

The CHAIRMAN: That was the intent of using the language "given an opportunity."

Senator CROLL: But does it do that?

The CHAIRMAN: Do you want more precise language?

Senator CROLL: To be given an opportunity in lieu of what?

The CHAIRMAN: To make or cause to be made a copy thereof.

Senator CROLL: Yes, that does something towards it.

The CHAIRMAN: Of course, we could add, "whether on the premises, or elsewhere."

Senator CROLL: That might do it. That is the point I am making.

The LAW CLERK: And it must be certified.

The CHAIRMAN: On this point we are not operating on parallel lines; we are on the same line. I feel strongly on the question of walking in and seizing documents with no restraint of any kind, because from experience I have seen what happens.

Senator Kinley: It can disrupt the whole organization.

Senator CROLL: They do that, too.

The CHAIRMAN: I have told Mr. Tassé time after time that when we speak of the Superintendent we are not talking about him, but we have to proceed on the basis that there is a personality holding that office that may not be like him.

Senator CROLL: Mr. Tassé is new to his office. We are taking a new look at it, and I think he should be grateful to us for laying guidelines for him so that he does not get into trouble and irritate us beyond measure.

The CHAIRMAN: Mr. Tassé has been very helpful. Shall I read this with the changes? This is sub-paragraph 9:

(9) Notwithstanding anything contained in this section—

That has to do with seizures, or anything else in the section—

—before any book, record, paper or other document relating to a matter or file which has been actively dealt with at any time within the two years immediately preceding the seizure, examination or production, and which has been seized, examined or produced, may be removed from the premises on which it is so seized, examined or produced, the person from whom the original document was seized or by whom it was produced shall either

(a) be provided, by the person by whom it was seized or examined, with a copy of such document certified by a person thereunto authorized by the Superintendent to be a copy made pursuant to this section, or

(b) given an opportunity by such person, for a period of forty-eight hours following the seizure, examination or production, to make or cause to be made a copy thereof, whether on or off the premises, and to have such copy certified by a person thereunto authorized by the Superintendent to be a copy made pursuant to this section.

Senator CROLL: At the expense of the people of the department.

The CHAIRMAN: Yes.

Senator KINLEY: Is there any secrecy clause in this act?

The CHAIRMAN: No. This will come in later.

Senator KINLEY: I am thinking of interviews with reporters of newspapers, and so on. Is there no secrecy clause?

The CHAIRMAN: No. After all, bankruptcy is a federal statute and it is really criminal law.

Senator KINLEY: Don't forget that this man can take any papers from the premises.

Senator Croll: No. He gets an *ex parte* order referring to papers relating to the particular case. He cannot take any other papers; they will not give them to him anyway.

The CHAIRMAN: The only question left, if the opportunity is given to the man whose documents they are to make copies, because the Superintendent will not provide him with copies, who shall pay for it.

Senator CROLL: Let us consider that. Supposing a situation arises in the estate by which there is likely to be a prosecution. A lawyer ends up with a bushelful of documents. There is not a dime in the estate. The trustee has to have the documents. Now, who will pay? He has the documents and they are taken away, and there is no money in the estate, yet you cannot leave him without the documents. That is conceivable with lots of these estates. You are going to handicap any investigation worth anything at all if the lawyer has not the documents in his possession. He will say, "I am not going to lay out \$200 or \$300 to have documents copied."

The CHAIRMAN: Then who pays for it?

Senator CROLL: The Government has taken up the document and the Superintendent will have to charge. It may be that the Superintendent will not pick up all the documents, but will examine each one before he does so, or he may say instead, "Give me that file."

The CHAIRMAN: You can accomplish that, I think, by inserting after "make or cause to be made a copy thereof, whether on or off the premises," the words "at the expense of the Superintendent."

The LAW CLERK: I think that would accomplish it.

Mr. TASSÉ: We should have the choice of the printer.

Senator CROLL: I think this is going to be good law, not only here, but that it will be heard in other places as well.

The CHAIRMAN: We are going to give Mr. Tassé the opportunity to deal with this. However, he did make a comment that if he is going to have to pay the shot he should choose the printer. The answer is that we need never come to this paragraph (b) if he provides the copy under subparagraph (a); and if he provides the copy, certainly he can choose the printer.

Senator CROLL: Yes.

The CHAIRMAN: So that we would not be working any hardship there. I will re-read (b) of subparagraph (9):

(b) given an opportunity by such person,

the Superintendent

for a period of 48 hours following the seizure, examination or production, to make or cause to be made a copy thereof, whether on or off the premises and at the expense of the Superintendent, and to have such copy certified by a person. . .

Is that fair?

Senator CROLL: That is fair.

The CHAIRMAN: What is the view of the committee on that?

Senator CROLL: I think it is very fair, and I will move that.

The CHAIRMAN: Mr. Tassé, we are ready for you now.

Mr. TASSÉ: I must say that I was handed a copy of this proposed amendment at 20 minutes before 2 o'clock. In my mind it raises very important questions, and I must say that I am not prepared at this time to comment fully

and to advise on its merits. I must also say that there was an amendment that I worked on within the department, and for the record, with the permission of the committee, I think I should be allowed to read it into the record. The suggestion that I had made would replace subsection 7, and would read as follows:

(7) Where any book, record, paper or other document is seized, examined or produced in accordance with this section, the person by whom it is seized or examined or to whom it is produced or the Superintendent may, and if directed by the court to do so shall, make or cause to be made one or more copies thereof and

(a) in any case where a copy thereof has been so made, shall upon request by the person from whom the original document was seized or by whom it was produced send a copy thereof to such person, or

(b) if no copy thereof has been so made, shall allow such person, at any reasonable time and at a place convenient to such person and the Superintendent, to have access to the document so seized or produced or himself be given an opportunity to make or cause to be made one or more copies thereof,

and a document purporting to be certified by the Superintendent or a person thereunto authorized by him to be copy made or caused to be made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if it were proven in the ordinary way.

As I am advised now, this is the amendment that I would be prepared to accept, and if time is given me to consider the amendment that has been proposed by the chairman, I will look into the matter further.

The CHAIRMAN: There are a couple of other items I want to deal with before we adjourn. I think Mr. Tassé's request is fair. He has to go back and consult with his superiors and ascertain their viewpoint, but this has got to the stage where we have moved and seconded the amendment of the kind that I have read, with the changes that were made here. I suggest we let it stand at that stage, and when we finish this meeting today we will have another meeting tomorrow morning for consideration of other bills and we can resume our consideration of this then.

I reserve any comment on Mr. Tassé's amendment, but it lacks the basic ingredient I think the committee wants, which is that before an original document is taken off the premises relating to any current operations, the person from whom it was seized or by whom it is produced must have a copy.

Senator CROLL: All I can say to Mr. Tassé is, perhaps knowing something of the subject, what you have brought here to us will get you into so much trouble you will be in hot water all the rest of the time you are in office.

Mr. TASSÉ: I am very much afraid this will be my position and I would have these problems with the proposed amendment.

Senator CROLL: What we are giving you now is practical. The Chairman knows the business; there are others of us who know the business; and we are trying to give you a practical approach to it and not a jumble of words, and at the same time protecting the public interest.

Senator KINLEY: Liberty of the subject.

The CHAIRMAN: On the question of solicitor and client privilege, we have worked with all kinds of drafts and we have finally come down to this:

(10) Notwithstanding anything in this section, the provisions of section 126A of the Income Tax Act apply *mutatis mutandis* in relation to

any requirement pursuant to this section to give any information or produce any book, record, paper or other document, as though that requirement were a requirement under section 126 of that Act...and for that purpose, any references in section 126A of that Act to the Minister of National Revenue and the Deputy Minister of National Revenue for Taxation shall be read as references to the Minister and the Superintendent, respectively.

In other words, we are importing into the Bankruptcy Act the solicitor-client privileges that are provided for in the Income Tax Act, and we are having the transition provisions in this subsection instead of copying the whole thing out.

Now, it has been moved and seconded—

Senator CROLL: I will move it.

The CHAIRMAN: Do you wish to reserve this one also, Mr. Tassé?

Mr. TASSÉ: Yes, Mr. Chairman.

The CHAIRMAN: The other day we carried section 22, which is the transition section concerning the application of these provisions to existing bankruptcies at the time these provisions become law. Some question was raised by Mr. Greenblatt from Montreal and Mr. Biddell, who were very useful in our proceedings and gave us the benefit of their experience. We carried the section as it was. Mr. Tassé has since reconsidered the section in the light of the representations that were made, and he has proposed the following new section to replace the one in the bill. This reflects the viewpoint and concern of Mr. Biddell and Mr. Greenblatt, representing the Chartered Accountants' Association and the Canadian Bar Association respectively, and I am satisfied that it does that. The proposed new section 22 would read as follows:

(1) Sections 1, 11, 12, 13, 14, 15 and 18 apply only in the case of an assignment, proposal by an insolvent person or receiving order filed or made on or after the day this Act comes into force.

Those sections have to do with reviewable transactions. This is something new. We make them applicable only to some bankruptcy that occurs even after this bill becomes law. Then, subsection (2) provides:

Subject to subsection (1) this Act applies in the case of any assignment, proposal or receiving order filed or made before or after this Act comes into force, but not so as to affect any order, rule, proceeding, action, matter or thing had, done, made, completed or entered into under the Bankruptcy Act in respect of any such assignment, proposal or order filed or made before this Act comes into force.

This is in line with the concern that these men expressed as to whether or not the new things that we were importing by virtue of this bill, particularly in connection with the reviewable transactions, would create problems in respect of estates that were now under administration. The design of this is such as to make it absolutely clear as to where the division occurs. This is one amendment that Mr. Tassé supports. It is his draft, and we agree with it.

Senator CROLL: Why does he support this amendment?

The CHAIRMAN: Would you care to answer that question, Mr. Tassé?

Mr. TASSÉ: It is because it expresses the intention we had in mind, and it does not leave in doubt the fact that the provisions—

Senator CROLL: What was the doubt?

Mr. TASSÉ: Mr. Greenblatt expressed concern that if we were to make applicable to these estates that are presently under administration these sections relating to reviewable transactions there may be problems.

Senator CROLL: Why? If it is a fraudulent bit of business why should we not get our nose into it?

The CHAIRMAN: This does not prevent your getting your nose into it. There are new aspects of the law as to what are reviewable transactions, because of the relationship between a person who is in the position of a creditor and the debtor.

Senator CROLL: But, Mr. Chairman, in this bankruptcy business we are not concerned only with keeping our house in order tomorrow; we have a lot of cleaning up to do as of yesterday. We want to give him the authority to be able to clean up a lot of things that need cleaning up in this country, and we do not need to say, "Thus far you can go, and thus far you cannot go".

The CHAIRMAN: This does not inhibit him at all in that regard.

Senator CROLL: From the way I heard it I thought it did. We will look at it again.

The CHAIRMAN: No, it does not. The three of us looked at it, and we have conferred with Mr. Biddell and Mr. Greenblatt. We are all of the opinion that what it does is clarify what was intended anyway in section 22.

Senator CROLL: What Mr. Biddell and Mr. Greenblatt want is not what I want.

The CHAIRMAN: And it is not necessarily what I want.

Senator CROLL: Their interests are a little different from mine, naturally. They want things in an orderly fashion. They are good, fine people, and they want things in an orderly fashion. I am not so much concerned about the orderly fashion of it as I am the justice of it.

The CHAIRMAN: Mr. Tassé says that this section 22, in the form in which he proposes it, expresses better the intention of the department in their drafting of section 22 than the original section 22 does.

Mr. TASSÉ: A number of problems would arise from the way it had been drafted. For example, if you had an estate under administration for four years, then the trustee would have to look into the estate and ascertain if there had not been transactions made before the opening of the estate—that might mean five or six years before—to study whether it was a proper transaction, and to some extent I think this should have been retroactive.

The CHAIRMAN: Have I a motion that section 22 be struck out and a new section 22, as proposed by Mr. Tassé, be substituted?

Senator CROLL: No. Will you defer it until I have time to think about it?

Senator FARRIS: Do I understand that actually our Law Clerk recommends this?

The CHAIRMAN: Yes.

The LAW CLERK: My only concern is the legality of the form.

The CHAIRMAN: You are concerned with the legality, and I am concerned as to the substance. We have a motion. The committee will convene tomorrow at 9.30 a.m. We shall have three other bills to deal with in addition to this one. I may say to Mr. Tassé that if his minister wishes to come over to make any presentation in relation to these changes, which would appear to be changes, we shall be glad to hear him tomorrow morning.

Senator CROLL: Mr. Chairman, is it possible for you to have a copy of the amendments mimeographed and placed in the hands of the members later today?

The CHAIRMAN: Yes.

Senator CROLL: I would like to see them.

The CHAIRMAN: You will receive them.

Whereupon the committee adjourned.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, May 11, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill S-17, to amend the Bankruptcy Act, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: I call the meeting to order. We will resume our consideration of Bill S-17. Yesterday copies of the amendments which were moved and seconded in committee were distributed to all senators. The Minister of Justice has seen them, and he has some representations to make.

As will be recalled, one of the amendments on the list replaces section 22. I do not think we are concerned about that this morning because this amendment was drafted by the department on the basis that it would better express the intent of the section than what was in the bill originally. I take it, then, Mr. Minister, you are going to address yourself to the matter of seizure of documents and, possibly, solicitor and client privilege.

The Honourable Lucien Cardin, Minister of Justice: Yes. Mr. Chairman, before I touch on subsection (7) I should like to tell you and the members of your committee that I appreciate very much the work you have been doing on this bill. I have followed your proceedings closely. I need not tell you that this bankruptcy legislation is very important to us, and we would hope to be able to bring it to a final conclusion and have it incorporated in the law as soon as possible.

I can say that at the meeting of the attorneys general held last winter it was agreed by most of them that the real stumbling block which existed in the administration of the Bankruptcy Act was this matter of being able to inquire into the transactions of different companies in that there was a sort of a grey area where the police, and the attorneys general, did not feel they had sufficient information to warrant a prosecution or even further inquiry. It became quite evident that the only way to fill this vacancy was to give to the Superintendent powers which he did not have under the act, which would permit him to make inquiries and call for papers and things outside of the actual bankrupt estate. It was felt that by so doing it would be possible to obtain the evidence necessary to be able to prosecute certain companies and certain people for certain transactions which were contrary to law.

So we are back again with the problem of, on the one hand, trying to protect the rights of individuals and individual companies, and, on the other hand, trying to give to the Superintendent those powers which he needs if we are going to put an end to the abuse that is being made of the law as it stood.

I feel that under the circumstances there should be some means, a happy medium between the two, which would at the same time give the Superintendent those necessary powers and also protect the rights of individuals. However, I would be very hesitant to do anything which might obstruct the Superintendent in his job of trying to detect and to find fraudulent or near fraudulent transactions. I would also be reluctant to admit or to accept anything which might be used by people to render the administration of the act difficult,

and particularly to obstruct or to delay the work of the Superintendent in his endeavours to carry out these additional powers that we have provided for in these amendments.

This is the basic thinking that we have had. I can say that the Cabinet committee on legislation went through this very carefully, and it was felt at the time that if there is any benefit of a doubt to be given at this present time under these present circumstances, the benefit of the doubt should be given in favour of the Superintendent, and that the powers that he has should not be jeopardized in any way by any possibility of delaying tactics or delaying procedure.

We felt, and the members of the legislation committee felt, that section 7 as it was written gave these powers.

I understand that the Senate committee has studied the amendments very carefully and has certain representations to make in order to better protect the individuals.

I have read some of the amendments to clause 3, and I would like to hear some of you on it.

I can see the point in getting copies of the seized documents to the individuals. In normal circumstances, that would not be objectionable, but it can also be a tool whereby if a company or some companies were really caught in negotiations which were fraudulent, or what not, they could use this as a means of obstructing the work of the Superintendent. This is what we want to avoid at all costs.

I may also suggest here that, as you all know, there is a complete revision of the act, and I believe that the work has been going on very well and that by the end of this year the act should have been completely revised.

I am wondering whether it would not be wise to give, as I mentioned before, the benefit of the doubt to the Superintendent. I am confident they would not abuse the powers that they have. However, in case they should, and I do not see why they would, then of course this whole thing would be taken up again at the revision. It is a matter of months.

The question of pre-bankruptcy frauds, and so forth, has been, as you all know, a most serious problem. I believe that not all the people, but at least some of these companies—people who have been suspected of fraud, would not hesitate to use any possible loophole in the law in order to render the administration of the law and the work of the Superintendent almost impossible, and this is what we want to avoid.

I would keep in mind the rights of individuals, and so on, and in sincerely wishing to protect the rights of individuals I would hope it would be possible to allow the Superintendent to carry out his job as is necessary without being caught up in a lot of administrative red tape, which in fact would destroy a lot of the purpose for which these amendments has been made.

I need not tell you that the real basis of all this legislation and these amendments is just to give to the Superintendent these additional powers which he did not have. Because he did not have them there have been loopholes in the law which certain unscrupulous people, companies, have utilized to the fullest extent, and I think it is essential that this be stopped as quickly as possible.

The CHAIRMAN: Mr. Minister, this committee has been just as conscious as your department and as the Superintendent of how important this question is. I think all you would have to do is read what was said in the Senate and to hear what was said here. There is a full appreciation of the importance of this legislation.

The first point I want to make in connection with the proposed amendments is that the power of seizure of documents is not affected in any way by the proposed amendments. The only thing that is affected is that in a class of

documents which are in the category of current files—and we say current files that have been in use within a period of two years before the date of seizure—that when the Superintendent or his agents go in and make a seizure and seize those documents, then one of two things must happen. Either the Superintendent provides a copy or he must afford an opportunity to the man in whose possession the documents were, to have copies made, and the limit of time for that is 48 hours. We have said this must be done in 48 hours, but the documents all the time are in the possession of the Superintendent who has made the seizure.

So that in view of the committee in connection with this amendment, which has been moved and seconded, we felt there was no interference with the processes of the powers that are being given to the Superintendent, and we are making it possible for a person whose documents have been seized to carry on business.

The illustration you have heard me give so many times is a most recent one which had nothing to do with bankruptcy, but where this power of seizure exists under the Income Tax Act, and there was a seizure made, not of any particular files, in one of the largest accounting firms in Toronto. The officers came in with their cartons and took every book and record out of the place in the middle of the trial.

But there was authority to do it in the Income Tax Act, so this simply strengthened my resolve to bring it to the attention of the committee, and yet the procedure we have proposed, I emphasize, interferes in no way with the right of seizure, with retention of the custody of the documents by the Superintendent all the time; but it simply means that either through the Superintendent or with the assistance of the Superintendent the man who possesses those documents is going to have a copy, if he can get it made within 48 hours.

Senator CROLL: Mr. Minister, of course, I support fully what the Chairman has said, but it does occur to me the minister has not long been out of the practice of law and realizes what all this could mean in an office and how it is impossible to carry on without documents which may come to you, particularly in this instance where you have not offices every place. You may seize documents in town "X" and the documents all go to city "B" and you have 100 miles distance between you and them. It is an impossible situation. However, this occurs to me, Mr. Minister. You told us this morning that the act is being looked at and will be ready in three or four months. Why do you not do this, let this amendment go through? You will be back here in three or four months and you can say, "It will not work, for these reasons. We have tried it. It has been impossible to operate, and we think you ought to take it out." We are reasonable people, I think.

Hon. Mr. CARDIN: Senator, why could we not do the reverse?

Senator CROLL: The trouble is we are living here with experts, and to try and get it back in again at a later time you will be accused of having passed over the opportunity before. This is our first opportunity to deal with a matter that has become very vital, and we think if we deal with it now, you might not come back for six months; I do not know. This is not easy to do, this job of redrafting the Bankruptcy Act. But, as the chairman has pointed out, your power is unlimited and you have far-reaching rights, and no one wants to interfere with them. We are working to allow a person whose documents are seized to carry on his normal business, if possible, because, in the main, he is not usually the culprit; he is the trustee or someone else. Well, it may be that he is the culprit, but he may not be. Otherwise you may be taking out cases of documents which may take an excessive amount of time to make copies of. In those circumstances he would be a little more careful in being arbitrary. If he is

arbitrary—and I am not suggesting that—he will take things that he needs and not have a holus-bolus crack at it. He is short of staff and has to go through it. It is a long process and it is almost impossible to get any order out of it.

This comes as a result of practical experience of half a dozen lawyers around here who have practised for a long time and know what the concern is. If it does not work, the power is there. You can come back later on and say, "For these reasons it will not work. We want an amendment." I am sure we would be reasonable about it.

Hon. Mr. CARDIN: Senator, if we are dealing with normal people who have not anything to hide and they are in good faith, it might work. We have doubts—serious doubts—as to whether or not from an administrative point of view it would. But if we are dealing with, as the presumption is, people who are not in good faith, then they could tie up the Superintendent tightly.

The CHAIRMAN: I do not think they could, Mr. Minister. Could you point out where the minister would be tied up in any way?

Hon. Mr. CARDIN: Not the minister, but the Superintendent.

The CHAIRMAN: Yes, the Superintendent?

Hon. Mr. CARDIN: How could he be tied up?

The CHAIRMAN: Yes, under the proposed amendment?

Hon. Mr. CARDIN: He could be tied up by having the man whose office or documents have been seized getting copies of every possible document seized. If you were dealing with a few documents then perhaps there would be no problem, but if, in fact, you are dealing with a big bankruptcy and there are several companies involved and you do have a whole pile of documents, some of which are difficult to reproduce, then it could well be that the Superintendent might not be in a position to give copies. The bankruptcy staff is not all that big that it could spend its time in trying to get copies made, and what not.

The CHAIRMAN: Under the proposed amendment the Superintendent is not obliged to give copies. He is not obliged to. If he does not, as to current documents, then the person in whose possession they were has 48 hours within which to make the copies, and the documents always remain in the possession of the Superintendent.

Senator CROLL: Mr. Minister, I cannot speak of the smaller communities, but this is likely to happen in the larger communities, and it is no trouble at all for a Xerox machine to go to work and do thousands of copies in a day; and in the larger cities it is no trouble at all to take documents into a photographic shop and they are reproduced within hours. It is a matter of custody, I admit, but in the main larger cities most places have a Xerox machine. If your department has not, then the lawyers have, or almost all of them have the use of one.

Senator BEAUBIEN (*Bedford*): Who would pay the cost?

The CHAIRMAN: This amendment provides that the cost is charged to the Superintendent and not the person from whom the documents are seized. We debated that in committee, and we felt that since the man is being deprived of his documents he should have copies and should not have to pay for them.

Senator POULIOT: Mr. Chairman, I have listened carefully to the discussion and I have not yet asked a question.

The CHAIRMAN: Then you go ahead right now, senator.

Senator POULIOT: Thank you, Mr. Chairman. My question is about a seizure of documents in the course of the bankruptcy. Copies will be made. Who will have possession of the documents when the copies are made and who will arrange for them to be made? Will the copies be made in the Superintendent's office, or how will he get possession of the documents for the making of copies?

The CHAIRMAN: Actually, very simply. How will the person from whom the documents have been seized get possession to make copies, is that the question?

Senator POULIOT: I would like to know how the copies would be made. We have spoken of the originals and the other copies, and one set of documents will be in the possession of the bankrupt and the other set will be in the possession of the Superintendent, if I understand it. Will the Superintendent have the copies or the originals?

The CHAIRMAN: The Superintendent at all times will be in possession of the documents that have been seized.

Senator POULIOT: The documents themselves?

The CHAIRMAN: Yes, the original documents.

Senator POULIOT: And the bankrupt will be in possession of a copy, and he will have 48 hours in which to have copies made and delivered to the bankrupt?

The CHAIRMAN: No. First, the Superintendent may furnish copies, but he is not obligated to furnish copies under this amendment, but if he does not furnish a copy then the person in whose possession the documents were at the time of the seizure has a right exercisable to make copies within 48 hours. The documents are still in the possession of the Superintendent. How would the procedure go? The Superintendent or an officer of his would attend in possession of the documents and supervise the copying, and then would take them back to wherever they are stored. They never go out of his possession once they are seized.

Senator POULIOT: How will the copies be made, by computing machines?

The CHAIRMAN: That is the usual way, reproducing machines. I know that the Combines Investigation staff have a little portable machine, and they make a lot of these copies right on the premises. When they want to take originals away for further examination they have the photographic processes in their headquarters where they produce copies.

Senator POULIOT: And they will be delivered to the bankrupt?

The CHAIRMAN: No, under the Combines Act the originals are returned and the department keeps the copies. But, under this act, the scheme of it is the reverse: the Superintendent keeps the originals at all times.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, I wonder whether the minister could meet the point that we have just had explained to us about the limitations of the effectiveness of his officials? When the person who wants copies and is obliged to make them himself has only 48 hours in which to get the copies, could you illustrate the difficulty that that kind of provision would present to the department?

Hon. Mr. CARDIN: Suppose the documents were in the possession of the company, for instance, and were seized by the officials of the Bankruptcy Department. If the man wanted to have copies made, it would mean that the police would have to be on the premises for as long as these copies were being made.

Senator SMITH (*Queens-Shelburne*): With the same limitation of 48 hours?

Hon. Mr. CARDIN: With the same limitation of 48 hours. That does not make it too good for the company or anybody else, really. There is—and I come back again to this, Mr. Chairman—the case where no problem would be involved: where a relatively small number of copies of the documents would be seized.

Of course, copies would be made very simply and they would have to be certified and what not. There is no problem involved there, but if you do have a big bankruptcy where several companies are involved—where, as recently happened, I understand, there is a bankruptcy involving headquarters in three

different cities—then, it does cause some difficulties, because the bankruptcy people, who are not that numerous, would simultaneously have to go into these three companies—or four or five or however many companies there might be—and they would then have to go through all this procedure.

It is strongly felt—and believe me we are not bringing this forward just to be difficult—that if this type of amendment were passed we would be tying down the Superintendent and his officials to the point, particularly when we are dealing with people who are not of good faith where effectiveness of the Superintendent and his people would be completely nullified.

The CHAIRMAN: For 48 hours.

Hon. Mr. CARDIN: Even for that length of time.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, although I have got a copy of the minutes, I did not hear all of this discussion and I do not want to give any indication of non-solidarity among cabinet ministers, but, just by way of compromise on this point, I am wondering whether there could be some provision that, if the 48-hour period is deemed to be inadequate—and I think everybody can see that the minister on this point may have something which is valid—perhaps something could be put in there that would extend the time sufficiently.

The CHAIRMAN: Well, senator, no. The minister's position is that the 48 hours will unduly interfere, but the 48 hours is not a limitation in relation to the Superintendent. It is a limitation on the person whose documents have been seized.

If it is left to him to make the copies, he has only 48 hours to do it. If he does not get it done in the 48 hours, that is his tough luck. That is why we put that limitation in there: so as not to interfere with the operation of the Superintendent.

Senator LEONARD: Mr. Chairman, my reading of the amendment seems to me also to make it clear that this 48-hour period exists whether the documents are on or off the premises. Is that correct?

The CHAIRMAN: The copying within the 48-hour period may be done either on the premises where the documents were seized, or off the premises, which means you might have to go to some commercial establishment. But the way the documents would get to the commercial establishment would be in the custody of the Superintendent.

Senator LEONARD: When the seizure is made, cannot the documents then be immediately removed from the premises?

The CHAIRMAN: No.

Senator LEONARD: Where is that set out?

The CHAIRMAN: In subsection (9).

Mr. HOPKINS: "...before any book, record, paper or other document...".

Senator LEONARD: All right.

Senator Pouliot: Mr. Chairman, with the exception of subsections (8) and (9) of section 3, which have been drafted by the committee, may I ask the minister who has drafted this piece of legislation?

Hon. Mr. CARDIN: Mr. Thorson, with some help.

Senator Pouliot: It was drafted by the department?

Hon. Mr. CARDIN: After long consultation with the committee on legislation.

Senator Pouliot: By whom in the department?

Hon. Mr. CARDIN: Mr. Thorson is the drafter, usually, but there are other people with him.

Senator POULIOT: Because I find it just as clear as mud. I am sorry.

Hon. Mr. CARDIN: I do not know on whom the reflection may lie.

Senator POULIOT: I am sorry, but it is just a question of opinion.

Senator WALKER: Mr. Chairman, referring to subsection (8), I think you said that there was no obligation on the superintendent to make these copies, if requested. Where does that appear? Because subsection (8) seems to say—

The CHAIRMAN: You must take the basic premise. The basic premise of these two subsections is that there are really two classes of documents. There are current files which are mentioned in subsection (9), "notwithstanding anything that is elsewhere," and those would be files in which there has been some activity within two years of the date of seizure.

Subsection (9) relates to all documents, and there is no limitation on taking them away.

The qualification of what they can take away without copies being made is contained in subsection (9). All subsection (8) says is that you give access, and that the superintendent may request copies. But it does not interfere with his taking the documents off the premises.

Subsection (9) is the one which starts off, "notwithstanding anything contained in this section," in relation to a special class of documents which would be the current files.

Then, before you take them off the premises, either the Superintendent must give a copy, or the owner or the possessor must have the opportunity, which he must do within 48 hours of making copies. But they never get out of the custody of the Superintendent once he seizes them. So they cannot go astray.

So, Mr. Minister, it would appear to get down to the question that 48 hours is too long a period, and it is too long a period within which you suggest the Superintendent's hands might be tied in his investigation. I do not think his hands, even during the 48-hour period, would be tied at all. He would have custody of the documents, except during the time required in actually making a copy. He would be entitled to keep looking at them and keep examining them, and, when you look on the other side of the coin, you are interfering with the current operations of a business, which can cause a very substantial loss to the person.

The statement here about documents has constantly referred to the bankrupt. This section is much broader than just seizing things which are in the possession of the bankrupt. By that time there is a trustee who should be in possession of the documents, and they would be seized from him. This means seizure in other places, really, in places other than the premises of the bankrupt.

Hon. Mr. CARDIN: That is right.

The CHAIRMAN: Therefore, you are interfering with third persons. You might go into a chartered accountant's office or a solicitor's office.

Senator CROLL: Or a dozen other offices.

Hon. Mr. CARDIN: This is true. However, the problem in the past in this field has been that there was not this power on the part of the Superintendent to go ahead and call for papers, and it is because of that that a lot of bankruptcies which had a connotation of fraud were able to go ahead undetected.

This is the whole purpose of the amendment.

The CHAIRMAN: There is no doubt about it, Mr. Minister, that we have broadened the investigatory powers of the Superintendent. Everybody is wholeheartedly in favour of that. We have added to his broader right of investigation the right of seizure. He is more limited under the existing act.

Hon. Mr. CARDIN: Yes, that is right.

The CHAIRMAN: So we have broadened that, but we are not interfering with his right of seizure in any way.

Hon. Mr. CARDIN: Not with his right of seizure, but I think in the actual physical administration of this, if copies are to be made, in certain circumstances it will cause so much red tape and difficulty that the effectiveness of the whole section will be severely endangered.

Senator CROLL: Mr. Minister, there will be inconvenience on both sides. There always is when you make a seizure. We are asking you to share that inconvenience with the person from whom you are seizing. That is all we are asking. It is not easy when you make a seizure of a great number of documents. It may be inconvenient for the Superintendent and also inconvenient for the person from whom you are seizing. All we are saying is that you should share that inconvenience somewhat, and keep the man in business by keeping the documents there. That does not in any way interfere with the right of the Superintendent.

Hon. Mr. CARDIN: But if the Superintendent seizes documents of a company he does so because he has reasonable evidence upon which to do it. Rapidity is essential in a seizure. We have to ensure that no documents are destroyed either in this particular company or any other related companies, and those related companies may be in different cities of Canada. It is not as though there was no real reason for suspecting the company. If a seizure is going to take place then it is because we have valid reasons for believing that something is wrong, and we do not want to take any chances of advantage being taken of red tape to destroy documents, and that sort of thing.

Senator CROLL: But, Mr. Minister, when you make a seizure from four or five companies what you do is have those seizures made simultaneously. An R.C.M.P. officer goes into company A, another into company B, and another into company C. They say: "These are the files we want. These documents are seized", and they sit there seized.

The CHAIRMAN: There is no possibility of destruction after the seizure.

Senator CROLL: That is right. The police officer wraps them up and says that they are seized. It is after that that you talk about making copies.

Senator GOUIN: Mr. Chairman, we do not want to interfere with the right of the Superintendent to seize documents, but we must recognize that it is a terrible thing for a company or an individual to be deprived of books and documents. We have had some experience of this in Toronto and in Montreal. It was under provincial legislation. They went in with a truck and removed absolutely all the books, papers and documents, and for a long period of time the man could not carry on business. He could not even answer a letter. Under the amendment we are discussing the documents are removed, and the Superintendent is not obliged to furnish copies. The only right given to the party suspected of fraud is that of access, and we do not know to what extent he will be given access. Moreover, the Superintendent or his agent is not obliged to certify copies he does give. I believe it is absolutely necessary for us to make sure that the suspected bankrupt is in a position of being able to defend his case.

The CHAIRMAN: Of course, this goes further than the bankrupt. It is really aimed at third persons and not the bankrupt.

Senator LEONARD: Mr. Chairman, I have great respect for the minister's views, and I want to give full weight to them. I must admit that at the moment I am not convinced. I still feel this is a proper amendment, but at the same time I am impressed by Senator Croll's suggestion that this might well go in on the understanding that when the revised act itself comes before us in due course we

will take another look at it. We shall then have had the experience of a few months. We can keep an open mind on it.

I am also rather inclined to think that before we come to a final decision on the amendment—we do not have to do it at the moment—we might give further consideration to what the minister has said.

The CHAIRMAN: Yes. When the minister is through we can have some further discussion.

If we have exhausted the discussion on the seizure of documents we shall proceed to the other branch, namely, that of solicitor and client privilege. Have you something to say in respect of that, Mr. Minister?

Senator CROLL: They are not opposing that, are they?

Hon. Mr. CARDIN: I understood that what was requested was that there be a privilege between solicitor and client at the time of an inquiry, or during the proceedings.

The CHAIRMAN: At the time of seizure.

Hon. Mr. CARDIN: Not at the time of seizure—

The CHAIRMAN: Do you mean at the time of the hearing of any case?

Hon. Mr. CARDIN: Yes.

The CHAIRMAN: One question is whether the solicitor-client privilege should exist at the time of the seizure of any documents. Of course, it might be ruled in any court proceeding that the documents are inadmissible. The difficulty with the law now is that the solicitor-client privilege has been breached, and information that has been given by the lawyer to his client is known after the seizure, and between the time of the seizure and the trial, whereas if the solicitor-client privilege is recognized at the time of the seizure the documents are sealed, and until a judge decides on the question of privilege or no privilege the seizing officers have no right to look at the documents. They are carefully guarded in custody. This is the procedure that is provided for in the Income Tax Act. If they are able to operate with it under the Income Tax Act then that must be a strong recommendation, and an indication that it is not interfering too much with their operations so far as the seizure of lawyer's documents is concerned.

Senator CROLL: The income tax people have an easy way of getting around it. They just breach it.

The CHAIRMAN: I know of one time when they did not.

Senator CONNOLLY (*Ottawa West*): In any event, this was drafted by the department, was it not?

The CHAIRMAN: No, our law clerk drafted this, and Mr. Tassé, at least, has seen the language of it.

Mr. TASSÉ: Yes, I saw the language.

Senator CONNOLLY (*Ottawa West*): I apologize. I thought you were on another section.

The CHAIRMAN: No, section 22 was drafted by the department.

Hon. Mr. CARDIN: If I may, I will say that I understand that subsection (10) is based on the provisions of the Income Tax Act. However, it is felt by the department and by myself that the purpose for which section 126A was included in the Income Tax Act was a very specific one.

The Department of National Revenue could go into a lawyer's office and take all the files and work out other income tax problems. This was the reason why this section was put in. I do not think this is applicable to bankruptcy at all. In the Income Tax Act it is a protection to the lawyer's clients, and that I think is quite reasonable, but it is not applicable in the field of bankruptcy at

all. This is why we agree there should be a solicitor and client privilege during the hearing, but that this should not extend to the seizure of documents.

The CHAIRMAN: The difficulty of extending it to the time of the hearing is that the person from whom the documents are seized may not be a party to the proceedings. Who is going to assert the privilege? It is the client's privilege, and it is the lawyer's duty, when the client asserts the privilege, to claim the privilege. There are practical difficulties, as I see it.

Hon. Mr. CARDIN: Yes, I think there are practical difficulties on both sides of the question.

The CHAIRMAN: At least, the income tax provision has worked. It has been in that act for some time. They have gone into an office with big and small cartons, and very often have taken everything, and to the extent that there were privileged documents the lawyer had the right on behalf of his client to assert that privilege, and then they could not look at them until the question of privilege had been settled. There have been numbers of such instances. I could recite many.

Hon. Mr. CARDIN: Mr. Chairman, I understand that the deputy minister has a point to make.

The CHAIRMAN: Yes, Mr. Driedger?

E. A. Driedger, Deputy Minister of Justice: Perhaps I could make a few general comments dealing first with the amendment. We have looked at it from a practical point of view to see if it will work. The difficulty we see would arise in most cases where there is a bankruptcy scheme involving half a dozen or a dozen companies in two or three cities in widely separated places.

I think—and the honourable Senator Croll also pointed this out—that if you want to get information effectively it is most essential to do all this simultaneously. We see great difficulty in trying to do this simultaneously if you have to leave the documents on the premises and give 48 hours to persons concerned to make copies, because the other companies who may be involved will know and how about it, and by the time you get around to them the documents might be gone. The alternative would be to bring your staff into each one of these places at the same time.

The CHAIRMAN: That is the way these seizures are done; they are not *seriatim*.

Mr. DRIEDGER: These documents all have to be examined by the Superintendent. It is not a case of putting a policeman in charge, but a case of the Superintendent and his staff being in the premises. You cannot do that simultaneously in half a dozen or more places.

The CHAIRMAN: But the penalty is on the person whose documents are seized in relation to current files that go back two years. We say that in relation to those, before they are taken off the premises, the person whose documents they are should have the right to make copies.

Mr. DRIEDGER: Of course the Superintendent would not know whether they were current or not unless he had examined them all first.

The CHAIRMAN: I would expect the man whose documents they are would be the one vitally interested in getting copies of his current files.

Mr. DRIEDGER: The other point I was going to raise is that if the person from whom the documents are seized is entitled to have copies as extensively as the Superintendent, is that not a charge on the Consolidated Revenue Fund?

The CHAIRMAN: No.

Senator CROLL: The Superintendent has a method of charging all bankrupts a certain amount for the purpose of carrying on his office, and it is not a charge on that. He assesses.

The CHAIRMAN: There is a levy under the statute.

Mr. DRIEDGER: It goes into the Consolidated Revenue Fund.

The CHAIRMAN: I do not know where it goes. I know it goes to him. That is all it says.

Senator CROLL: The point raised was this. In some instances, no funds are left—they are all gone. They have taken everything out of there. Somebody needs the files in order to represent a client. Who is going to pay for it? The Superintendent has the ability to assess the various bankrupts, the various trustees, and he does it pretty well automatically. So we thought it easier for him than the other way.

Mr. DRIEDGER: My understanding is that the Superintendent cannot spend the money—the money he gets goes into the Consolidated Revenue Fund.

Senator LEONARD: What is the point of saying it is a charge on the Consolidated Revenue Fund? This bill was introduced in the Senate. Is not everything in connection with it charged to the Consolidated Revenue Fund? The measure has not yet gone to the House of Commons.

Mr. DRIEDGER: In connection with the income tax provision I did want to make the observation that under the income Tax Act you are dealing with an assessment.

The CHAIRMAN: No.

Mr. DRIEDGER: Well, there might be others.

The CHAIRMAN: Yes.

Mr. DRIEDGER: But in the case of bankruptcy, the important thing is to get information to see the relationship between companies, and if you have to put the documents aside, seal them and put them aside, you have not the opportunity of going through them, and by the time you do get them probably the information is of little value to you, because the other companies involved may have taken their books away, so you would not be able to get at them.

I think the situation is different, because in the one case you are assessing for income tax. Here you want to get information and it is essential to get it.

The CHAIRMAN: That is exactly the language in the Income Tax Act. It is in relation to the administration of the act and the authority to go in and make seizure.

Mr. DRIEDGER: Would it not be a case of company "A" being given 24 hours, and although companies "B" and "C" might be involved you would not know they were involved, and inside of 48 hours they could get rid of the documents they did not want to get? You may be suspicious of company "A" but not of companies "B" and "C", who may be interested.

The CHAIRMAN: You know the answer to that. If you figure out that there are three or four companies in a scheme and you go in and make a seizure in one place, and by examination of those documents you may find that it leads you into other places, the moment you go into company "A" the telegraph system will work right away.

Senator BEAUBIEN (*Bedford*): Mr. Chairman, if they are given 48 hours how can they really get in to find out what it is all about?

Senator CONNOLLY (*Ottawa West*): I think the answer to that question is that probably before 48 hours in respect to the seizure, the seizure in company "B" begins. I do not think your amendment reads 48 hours from the seizure that

is made on the parent company, if there are subsidiaries that ultimately you have to get at.

The CHAIRMAN: It says a period of 48 hours following the seizure.

Senator CROLL: But the seizure may be at different times.

Senator CONNOLLY (*Ottawa West*): Yes, they may be different seizures. The point I want to make is that, as you suggest, Mr. Chairman, there is a tip-off.

The CHAIRMAN: No, I suggest that if you go into company "A" and it is only when you are in company "A" that you see from some records in there that companies "B", "C" and "D" may also be involved, the 48 hours delay in making copies would have nothing to do with the situation. The tip-off would come the moment you went in.

Senator MOLSON: Would it not be fair to say, Mr. Chairman, that you could not do the same things at the same time with the same document, and if you are having them copied no staff could really be examining them properly to see if it was company "B", "C", "D", "E" or "F"?

The CHAIRMAN: That may be a fair assessment. I am asking what is the conclusion to be drawn from that?

Senator MOLSON: What I want to point out is that it would merely delay or perhaps add to the possibility of the tip-off.

The CHAIRMAN: I am saying the tip-off would occur the moment he went in. The person whose documents are being seized is surely best informed of where this would lead, and the tip-off would occur right away. It seems to me that we have wandered somewhat from the point. We were talking about solicitor and client privilege. Have you anything further to add to that, Mr. Minister?

Hon. Mr. CARDIN: I would like to have your reaction to the proposed changes that were made, and which I think were circulated to you, to see just how far this would meet with your approval.

The CHAIRMAN: We are going to consider what you have said, Mr. Minister, after we have finished with the matter of representations. I was expressing a view, only the Chairman's point of view, that I felt the solicitor and client privilege should apply at the time of seizure. I tried to give my reason as to why it should not only be asserted at the time of trial, because then the real purpose of solicitor and client privilege has disappeared. The purpose of solicitor and client privilege is to retain as personal to the client legal advice that he has secured, and the moment you move the privilege out of the trial the documents are open to the seizing officer for all purposes.

Hon. Mr. CARDIN: But I understand that the provision of the Income Tax Act is for a specific purpose. I do not see that this is fulfilled in the Bankruptcy Act at all, and I think it might work the other way and cause some sort of obstruction.

Senator CROLL: Mr. Chairman, these amendments were drafted yesterday and copies were sent out to us. I do not know how much time the minister has had to give to them. He has heard our discussion here. Do you not think it would be a good idea to allow the matter to stand for the moment to give him a little more time to consider our amendments, and perhaps in the light of them come up with something comparable or helpful?

The CHAIRMAN: If the minister asks for further time to consider, I would certainly agree, but it will delay the passage of the bill. The minister would have to accept that as being explicit.

Hon. Mr. CARDIN: Mr. Chairman, of course, I do not want to delay unduly the passing of this bill. However, I think it is a most important matter. I feel strongly about not wanting to cause any obstruction to the work of the

Superintendent. I would ask to be given time to consider this. I am not sure whether this is normal procedure, but if it were possible to have a small, informal meeting between yourself and myself to go over some of this, to see if we cannot come to a happy meeting of minds and a working arrangement, that would be satisfactory to me.

I have before me amendments that you have proposed. I understand that you have also a copy of the changes which we feel could be made which you might consider. Then perhaps at a meeting we might see if we cannot iron out some of this.

Senator CROLL: Mr. Chairman, may I suggest that the Chairman designate a small committee to meet with the minister for the purpose of reviewing these amendments—whatever the chairman wants in numbers—at a time that is suitable to the minister?

The CHAIRMAN: I have found in the past that setting up a small subcommittee usually ends up by being so small it consists of one person, the Chairman.

Senator CROLL: I am satisfied to leave it with the Chairman.

Some Hon. SENATORS: Carried!

Hon. Mr. CARDIN: May I ask whether or not the committee did consider the alternative that was proposed?

The LAW CLERK: I believe, Mr. Minister, it was read into the record yesterday by the Superintendent, but I do not think copies are yet available to the committee as a whole.

The CHAIRMAN: No, but the committee was here and heard it, and we discussed the alternative procedures.

Senator CROLL: Yes.

The CHAIRMAN: And this drafting was on the instructions of the committee.

Hon. Mr. CARDIN: I see.

Senator LEONARD: It is still open for consideration by the committee, I take it.

The CHAIRMAN: We deliberately delayed the proceedings at the stage of having these amendments moved and seconded and not voted on.

Senator CROLL: They would have passed almost unanimously yesterday, as I think they would today.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, I should remind you it is not likely that the Senate will be sitting next week.

Hon. Mr. CARDIN: I regret the delay. However, I honestly believe this should be gone into much more deeply by myself, and I would hope to be able to get in touch with a group of honourable senators that the Chairman might designate.

The CHAIRMAN: May I suggest this, that we defer further action in relation to these amendments having to do with copies of documents and also having to do with solicitor and client privilege? However, I think section 22 which we stood yesterday—

Senator CROLL: I think we can carry that. I was the only one who objected to it.

The CHAIRMAN: Section 22 carries the benediction of Mr. Tassé. I think we should carry that. I take it you have no objection to that, Mr. Minister?

Hon. Mr. CARDIN: No.

Hon. SENATORS: Carried.

The CHAIRMAN: Then section 22 carries, and the two items, it is understood, stand at the request of the minister for further consideration, and the earliest

possible time they could be taken up by the Senate would be the week of May 24. Concerning this subcommittee, I am available, but I prefer not to be the only one.

Senator CROLL: It is up to you. You can call on anyone you like from the rest of the committee.

The CHAIRMAN: I have had that experience too. I have been struggling for a while to get one such subcommittee together.

Senator CROLL: I know what you are referring to.

Senator CONNOLLY (*Ottawa West*): Mr. Minister, is it agreeable that this matter go over until the Senate reassembles on May 24? This is satisfactory, Mr. Cardin?

Hon. Mr. CARDIN: I believe there is no alternative but to look into this more thoroughly.

Senator CONNOLLY (*Ottawa West*): I do not think the progress of legislation in the House of Commons is going to be affected in any way.

Hon. Mr. CARDIN: I agree with you. Thank you very much, Mr. Chairman, and I want to thank the members of the committee for having given me their views on this matter.

Senator LEONARD: We are grateful to you, Mr. Minister.

The committee adjourned its consideration of the bill.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 10

Complete Proceedings on Bill C-145,
intituled: "An Act to provide for the development of the commercial
fisheries of Canada".

WEDNESDAY, MAY 11th, 1966

WITNESSES:

Department of Fisheries: The Honourable H. J. Robichaud, Minister;
I. S. Walker, Chairman, Fisheries Price Support Board.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Hugessen	Reid
Blois	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Kinley	Taylor
Cook	Lang	Thorvaldson
Crerar	Leonard	Vaillancourt
Croll	Macdonald (<i>Cape Breton</i>)	Vien
Davis	Macdonald (<i>Brantford</i>)	Walker
Dessureault	McCutcheon	White
Farris	McKeen	Willis—(49)
Fergusson	McLean	
Flynn	Molson	

Ex officio members: Brooks and Connolly (*Ottawa West*).
(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, May 9, 1966.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Smith (*Queens-Shelburne*), seconded by the Honourable Senator Isnor, for the second reading of the Bill C-145, intituled: "An Act to provide for the development of the commercial fisheries of Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Smith (*Queens-Shelburne*), moved, seconded by the Honourable Senator Isnor, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 11th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Beaubien (*Bedford*), Blois, Burchill, Connolly (*Ottawa West*), Cook, Croll, Davies, Farris, Fergusson, Flynn, Gershaw, Gouin, Haig, Irvine, Isnor, Kinley, Leonard, Molson, Pouliot, Smith (*Queens-Shelburne*), Taylor, Vaillancourt, Walker and Willis. (27).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Croll it was RESOLVED to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-145.

Bill C-145, "An Act to provide for the development of the commercial fisheries of Canada", was read and examined.

The following witnesses were heard:

DEPARTMENT OF FISHERIES:

The Honourable H. J. Robichaud, Minister.

I. S. Walker, Chairman, Fisheries Price Support Board.

On Motion of the Honourable Senator Isnor it was RESOLVED to report the said Bill without amendment.

At 10.40 a.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, 11th May, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill C-145, intituled: "An Act to provide for the development of the commercial fisheries of Canada", has in obedience to the order of reference of 9 May, 1966, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, May 11, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill C-145, to provide for the development of the commercial fisheries of Canada, met this day at 11.00 a.m.

Hon. SALTER A. HAYDEN in the Chair.

The committee agreed that a verbatim report be made of the committee proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the Committee's proceedings on the bill.

The CHAIRMAN: Honourable senators, the Minister of Fisheries, the Honourable H. J. Robichaud, is present, and we have for consideration Bill C-145.

Is there any general statement, Mr. Minister, you would like to make, or are you going to deal with the particular parts of the bill?

Hon. H. J. Robichaud, Minister of Fisheries: Mr. Chairman, I do not think there is any need for me to make an additional statement this morning. I made a statement on the introduction of the bill, at the resolution stage in the House of Commons, and I also made a further detailed statement when the bill was introduced before the Committee of the Whole. However, I am prepared to answer any questions that would be directed to me.

The CHAIRMAN: Is it satisfactory to the committee that we proceed by way of questions?

Hon. SENATORS: Agreed.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, may I start the proceedings off by referring the minister to section 3. I am now voicing a few questions which were put to me when I moved second reading in the Senate.

There was a feeling among some members of the Senate that they should know more about what the intentions of the department were, and I would refer the minister to clause 3 of the bill which gives the power to the minister to undertake projects under the three headings, (a), (b) and (c). I wonder whether the minister can give us a short run-down on what the department has in mind in relation to these three classes of projects.

Hon. Mr. ROBICHAUD: Mr. Chairman, as stated in section 3 of the bill, it gives the power to the minister to undertake projects, some of which are outlined in the subclauses of the bill. The purpose of this bill is to give, under an Act of Parliament, powers to the minister to proceed with fisheries development projects.

In recent years, particularly since the federal-provincial conference on fisheries which took place in January, 1964, a number of projects for new exploration and new experiments in order to develop new types of fisheries both on the Atlantic and Pacific coasts, have been undertaken. Some of these

have been on a cost-sharing basis with the different provinces—particularly the Atlantic coast provinces and Quebec, and others with companies and a few with individual fishermen.

This had to be done under a special appropriation. This act gives power to the minister to proceed with such projects and it also expands to some extent the scope of this type of activity.

I do not know, Mr. Chairman, if the honourable senator has a specific project in mind, or if the committee requires more details, but I feel that this subsection of clause 3 covers in substantial detail the activities which are permitted under this bill.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, what the minister just said is very true, and I think I did mention in the Senate that I have never yet seen a bill which spelled out in such lucid fashion what the intentions are in general.

One of the questions which were raised during the debate—and I know the minister has been on a very important mission within the last few days and may not have had a chance to read or have reported to him what was said in the Senate—one of the points or questions raised was: is the Fisheries Department going into the fish business? Are we getting into a form of socialism, where we would be socializing the fish business? And I think perhaps an answer from you might be helpful.

Hon. Mr. ROBICHAUD: My answer is no, Mr. Chairman. The Department of Fisheries has no intention whatsoever of getting involved in the fish business. But we in the department do feel that, if fishermen are to introduce new types of fishing gear and make new explorations, if they are to find new varieties of fish, then it is our duty to assist, because this is part of research, and research is the full responsibility of the federal Government. We are contributing, say, on a 50-50 basis or, in some projects, on a 25-75 basis, where we bear 75 per cent of the costs for such exploratory projects.

There were a limited number of such projects before 1964, but the program has been accelerated since then.

A number of projects on a cost-sharing basis have been undertaken with the provinces or with the industry, but, to confirm that it is not our intention to get into the fishing business, I want to clear a point that was raised. I believe that, in the course of the debate on this bill before the Senate, the matter was raised why the federal department would not contribute to improving certain types of fish processing plants.

This is not our intention, because definitely it is not our intention to get involved in the fish business. We feel that this is a responsibility for the industry itself, and in some cases for the provinces to assist through loans or other measures.

Senator SMITH (*Queens-Shelburne*): I am glad to have that statement on the record, of course.

The CHAIRMAN: Mr. Minister, are those items which are set out in section 5 the limitations in relation to the development projects, and the authority therefor in section 3?

Hon. Mr. ROBICHAUD: The details which are mentioned in section 5 are applicable to cold storage only. This is perhaps a deviation from the items referred to in section 3.

In previous years a certain amount of assistance through grants was available under the Cold Storage Act, which was administered by the Department of Agriculture.

In the late fifties or early sixties it was decided by the Government then in office that this assistance should be discontinued. I think that was more or less

part of an austerity program; but since then representations have been made to the Department of Fisheries to assist in the construction or improvement of cold storage facilities.

The purpose of this clause 5 in the Act is to take care of such assistance. It is applicable to cold storage only.

Now, there is a different reason for the Department of Fisheries to get involved in this type of assistance, because under our new requirements we require that the temperature in cold storage, where fish is being held in storage, should be reduced to, I believe, 15 below, and this would require an additional expenditure by the owners of cold storage plants.

This is one of the reasons why we have this clause, which will provide special assistance to cold storage plants, but the same assistance does not apply in general to fish processing plants.

This does not mean, however, that should there be in some areas—whether it be the Atlantic coast or the Great Lake area or the Pacific coast—a processing plant ready to introduce a new process, a new type or way of processing fish, that we will not be called upon to assist at least at the experimental stage. This we are doing now on the Pacific coast, where we are trying to find new ways of processing dogfish.

This is a new venture which requires additional expenditure, probably with some risks involved although our experiments so far have proven quite successful. We feel in such a case that we are justified in sharing in the expenses involved at the experimental stage.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, I just have one more point and then I think some of the others should ask their own questions. I made the point, and perhaps I made it at too great length, when I had an opportunity to speak in the Senate on the bill, but my question now is; is there any provision in the bill which would give the minister and the department the power to enter into any other sharing of costs in connection with modernization, in terms of the new regulations both in effect now and to be proposed, to give those plants a chance to modernize, for example, their salt fish plants, in the same way that you are assisting the cold storage plants.

I know the situation there, and it is a very worth-while thing that you are doing in relation to the modernization of the cold storage facilities.

Hon. Mr. ROBICHAUD: Mr. Chairman, it is not our intention to get involved in this type of assistance. As I said earlier, this is a responsibility for the provinces. If the federal Government were to get involved in assisting practically every fish processing plant which needs modernization, it might be considered that the department wanted to get into the fish business. Now, these regulations are not new. They are not imposed by the federal Government or the Department of Fisheries, but are being supported by the industry itself in order that it may maintain a standard of fishery product which will enable us to compete on the world market. If I gave you this morning some details with respect to some of the existing plants in respect of which we are insisting on improvements I feel sure that the members of the committee would agree that we would have no alternative but to close down some of these plants in order to protect the industry.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, that is quite true in respect of the regulations that have been in existence for the past year or so. I think the industry realizes this is the sort of thing that has to be done. I was referring particularly to the proposed regulations which the department intends to make effective as of April 1, 1967. The effect of those new federal regulations on a great many of our small and poorly financed salt fish plants will be serious. They will have great difficulty in meeting the standards required, not in respect of the products they export from their plants in the future but in the kind of

plant from which they are exporting. A greater burden will be placed upon them than that which is placed on those which would like strict requirements.

The example I gave in the Senate was to the effect that the principle has been established in three other different fields, all relating to the improvement in quality and in the plants. One was the cheese industry. Here there is a very extensive program which is still going on, and in which the cheese product itself received a premium payment from the Government. Grants were also made for the improvement of plants making cheese. The second example I gave was that of the incentive payments to farmers who raise high quality hogs. The third one was the program, which has now been finalized, of subsidizing the equipping of the maple syrup industry in the province of Quebec with the kind of containers which will result in a better product.

If the federal Government has intervened in these other fields then it would naturally follow, I think, in order to encourage people to improve their product and their plants, and not at the same time force them to a large extent out of business by new federal regulations, the federal Government should give them some kind of assistance in meeting the requirements which do not affect, to any great degree, the large units. We are getting more large units all the time, but the situation in respect of them is entirely different from that in respect of the little plants which have not access to funds from other governmental sources.

Hon. Mr. ROBICHAUD: I think the difficulty in this field has been exaggerated. Very few plants, if any, have been closed due to the imposition of the new regulations. These regulations are standard, and they are being applied after long discussions with the industry. Even the draft regulations are submitted to the industry before they are approved by order in council.

I just want to repeat what I said earlier. We feel that in the fishing industry it is not the responsibility of the federal Government to become involved in this type of assistance. We may make comparisons with the assistance given agriculture, for instance, but we should not disregard the type of assistance that we in fisheries give to the primary producer by various types of subsidies and grants.

When we subsidize a fisherman, for example, with 40 or 50 per cent of the cost of his vessel and gear then it seems to me that this is a substantial assistance. Our assistance in this regard is aimed particularly at the primary producer himself, namely, the fisherman, and who we feel is the one in need of most help.

Senator SMITH (*Queens-Shelburne*): I am not arguing the point. I am glad that the minister has a chance of explaining his position before this committee, because I do not think this matter was explored to a great extent in the other place.

Following the observation just made by the minister, we have for many years made, and we are going to continue making, it possible for fish plants themselves, disregarding the interest we have always had for the fisherman as primary producers, to modernize their lower temperature cold storage facilities. It seemed to me that it was logical to do something in another field which would make it possible for the salt fish plants to come in under the new regulations. Perhaps I might be allowed to give the minister one definite illustration of what I am talking about.

There is in western Nova Scotia quite a number of plants which, because of the traditional method of fishing herring in a season that is limited to somewhere between two or three months of the year, will find it completely uneconomic to continue operating if they have to spend considerable sums of money. I recognize that many of these older units in this particular part of the country

eventually have to go. Some of them have already gone, and more will go soon. But, there is a number of them that fall into the class of small fish plants for which these regulations make great difficulty. I wonder if the minister would comment on that particular phase of it.

Hon. Mr. ROBICHAUD: Mr. Chairman, I repeat again what I have said. This is not the purpose of this act. This act has not been introduced in order to keep in business a large number of small fish plants, some of which are not what I would call economic units, or are not operating in an economic manner.

Senator Smith has mentioned that some of those plants will have to spend considerable amounts of money in order to meet the requirements of the fishery regulations. But, in most cases this is not so. The expenditures involved are not considerable, and they involve only minor improvements to the existing facilities. As I have said, I could give examples of some plants that are operating now but which should not be in business. They should not be allowed to operate. They should not be allowed to process food products.

Senator SMITH (*Queens-Shelburne*): Are you talking about the salt fish industry?

Hon. Mr. ROBICHAUD: Yes, I am talking about the salt fish industry. There is a very small number of fish plants in that particular section of Nova Scotia which will be affected to the point where they will have to close their doors.

Now, it has been the practice in the past, and it still is the practice, for the provinces to come to the assistance of those plants that can operate in an economic way by giving them loans to make such alterations as are required in the regulations. But, this is certainly not the purpose of this act, and I am sure that if this act was intended to give this type of assistance then we could be accused of trying to socialize the industry, or of trying to get into the fish business.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, I just wanted to relate my proposal to the minister to what he is doing in respect of modernizing cold storage plants in the fresh fish industry. The principle is the same.

Hon. Mr. ROBICHAUD: No, Mr. Chairman, the principle is not quite the same. Perhaps the basic principle is the same, but in most cases the cold storage operation of a fish processing plant is the most costly part of the operation, in both its construction and its operation and maintenance. It is a known fact in the fishing industry that it is not a paying proposition. The freezing and storing of fish in cold storage is a very costly operation. This is why we felt that is one aspect of the industry that could be protected by some type of assistance, either by grants or loans, which will be covered by the regulations under this act. This has been recognized in the past by previous governments. It was recognized that some special type of assistance should be made available to cold storage plants, because they have a very expensive operation.

The same thing cannot be said of a small fish plant engaged in preparing or processing salt fish for market, because all we ask of them is that they have a decent supply of water available. We ask them to have a decent floor that they can clean at the proper time. We ask that the walls be clean and painted. So, it seems to me that this is not the type of assistance that we should be involved in.

Senator SMITH (*Queens-Shelburne*): Mr. Minister, in the list of proposed regulations to affect the salt fish industry you have other requirements which come in the expensive field. I am referring to the fact that any part of the conveyor systems used in these small herring plants that comes into contact with the herring or any other kind of salt fish must be made of stainless steel. That is, if it comes into contact with the fish taken off the boats and hauled into the plants it must be of stainless steel. I have been informed—

Hon. Mr. Robichaud: May I interrupt here? You are not referring to salt fish plants but to curing plants.

Senator SMITH (*Queens-Shelburne*): What is the difference between a salt fish plant and a curing plant? The fish comes over the wharf onto a conveyor and it goes into the plant. From my understanding of what I have read—

Hon. Mr. ROBICHAUD: There is a difference in the number of small fish plants in that particular part of Nova Scotia that are engaged in the curing of salt fish—either dry cured or boneless—for market. But, you are talking now of plants engaged in the preparation of herring—that is, marinated herring—for market. I agree and insist, and I always will, that the regulations concerning those types of plants must be much more severe than those respecting the salt fish plants, because the operations are altogether different. If you are going to allow metal tables that are subject to rust, how are you going to prevent this rust contaminating the fish itself? The use of stainless steel in these conveyors is a must in this type of plant.

The CHAIRMAN: Mr. Minister, I do not think Senator Smith is complaining about your insistence on these features. He is talking about the cost, and who should help with it.

Senator SMITH (*Queens-Shelburne*): That is right.

The CHAIRMAN: You say that as a matter of policy—

Senator KINLEY: Mr. Chairman—

The CHAIRMAN: Just a moment, Senator Kinley. I have promised to recognize Senator Phillips after Senator Smith is through, and I am not sure that Senator Smith is through yet.

Senator SMITH (*Queens-Shelburne*): I will leave this for the time being, but I just wanted to make these remarks, and have the minister comment on them. He has made the statement that the department has consulted the industry and that they are in favour of it—or, at least, that is the impression I received. I have had some correspondence from an organization known as the Western Nova Scotia Fish Dealers' Association which I understand has 70 dues-paying members—

Senator ISNOR: How many?

Senator SMITH (*Queens-Shelburne*): Seventy dues-paying members, 55 or 56 of whom met with the inspection branch officials for a discussion of the proposed regulations. I have been informed that there was not one member of that association who agreed that these regulations should be in the form in which they are in all their aspects, not that they disagreed with the intent of them, or with the desirability of doing such things, but they were faced with financial problems in meeting the specifications. I have been told that they just cannot meet them having regard to the profits available from their businesses. It is difficult for them to obtain bank loans, or even loans from the Nova Scotia Government. The Nova Scotia Government, as the minister knows, has directed most of its attention to a large-scale lending program, in one form or another, to the new modern fresh fish plants, and perhaps some of the plants that in the future will be dealing with salt and cured fish.

These proposals, in the opinion of the people with whom I have had some discussion, are badly timed, having regard to the expense involved. I have been told that even for one of the smallest plants it would require an expenditure of \$20,000, and \$20,000 is a lot of money for a man who has no surplus, and who is vital to the support of the net fishermen in some of these harbours because he provides a competitive market pricewise for the product of the fishermen, whether it be herring or groundfish. That is the situation as it has been told to

me. I have not surveyed the whole industry, but I have talked to a number of people in it, and they have confirmed what I have said.

Hon. Mr. ROBICHAUD: I am sorry, Mr. Chairman, but I just cannot agree with this statement. Our feeling is that these improvements are overdue for the protection of the industry itself. I just cannot accept a statement that it will cost \$20,000 for a small plant to meet the requirements of the fisheries regulations. Through my personal experience in the fishing industry over the years—and I have visited a number of those plants—I know that when you take a pencil and a sheet of paper and go through the additions or improvements that have to be made to a plant to meet the regulations, you will find that in most cases the figures stated are much too high.

Senator SMITH (*Queens-Shelburne*): I shall put on the record a breakdown of the cost for a small fish plant. These are not my figures, because I am not in the fish business, but they have been given to me as minimum figures: For the replacement of tanks, \$6,000; cement floors, \$2,500; stainless metal requirements, \$2,000; approved stainless metal tables, \$1,000 per table—the amount there, of course, will depend upon how many tables are required. Approved water supply—this is a difficult figure because one does not know what it is going to cost, but my informant said the cost would be upwards of \$3,500. Those figures total \$15,000, and they came from people who said that the total could be a great deal more depending on other factors involved. The figure of \$20,000 that I gave appeared to be a reasonable one from my correspondence.

The CHAIRMAN: Senator, may I interrupt you. We have now reached the stage where perhaps we have worked this point over, across and sideways. We have the figures that have been supplied to you, and which you are not in a position to vouch for personally. We have the minister's statement that based on his experience the cost would not be anything of that order. We have the overriding basis for the regulations, namely, the concern for the health of the people—the consumers of food. Can we take it any further?

Senator SMITH (*Queens-Shelburne*): Perhaps not in relation to this bill, Mr. Chairman, but we have very few opportunities of discussing a subject of such great importance to us on the coast.

The CHAIRMAN: I am not trying to shut off any discussion.

Senator SMITH (*Queens-Shelburne*): I shall not delay this, but I did want to make sure that the minister understood the point of view of the operators of fish plants as it had been passed on to me. I would suggest that if he has figures given him by the departmental officials which are lower than the ones I gave, then that is the kind of information that is useful to the committee. Such information must be in the hands of the inspection branch people located in Halifax. They could have another meeting with the west Nova Scotia Fish Dealers' Association, and make them understand what they are up against better than it is understood today. I will leave it there.

Hon. Mr. ROBICHAUD: This might be the final word. I think we have gone far enough on this subject, but Senator Smith has referred to the replacement of tanks costing \$6,000. If there is a need to replace the tanks then it means the ones there are not suitable.

Senator SMITH (*Queens-Shelburne*): As I understand the situation, under the new requirements there must be in these fish plants no place for wood to come into contact with salt fish.

Hon. Mr. ROBICHAUD: Absolutely not. Wooden tanks are permitted in those plants. There is a misunderstanding there. The senator also said that it would cost \$3,500 for the water supply. I would hope in all cases we would insist that any plant preparing food should have an adequate water supply approved by a

laboratory. This is all we are asking. If a plant is using polluted water then we cannot allow that plant to operate.

Senator SMITH (*Queens-Shelburne*): Of course, nobody wants that, but that is part of the cost. I am just trying to make a case for these people. I think it should be explained to them so that they understand the situation better than they do now.

The CHAIRMAN: The question is: Do they have to spend that much money in order to overcome pollution?

Senator SMITH (*Queens-Shelburne*): I do not care what they spend. The point is that to meet the requirements that are going to be imposed on them they require so much money, and they tell me they have not got it. I think the minister understands the point of view that I was asked to bring to his attention. I conclude my remarks.

The CHAIRMAN: Senator Phillips?

Senator PHILLIPS: Mr. Chairman, my first question is on the assistance for bait freezing units, and cold storage. Can the minister give us any idea whether it is the intention of the department to carry on the plan under the old Cold Storage Act which I think was one-third, one-third, one-third.

Who would be eligible for the grants, and, if there were a grant, particularly in the case of a bait freezing plant, would it be available to all the fishermen in the area?

Hon. Mr. ROBICHAUD: Mr. Chairman, in reply to Senator Phillips' question, we have a special bait program in Newfoundland which does not apply to other provinces, this is due to part of the agreement of Confederation.

We also have available in other provinces assistance to bait freezing units for a maximum amount of \$10,000 or 50 per cent of the storage room, whichever is the lesser.

Under these regulations it is our intention to introduce a new type of assistance which could be partly on a subsidy basis, depending on the total cost of the construction, and perhaps we could also add to this certain loan facilities, long-term loans at a fixed interest which would facilitate the construction of such cold storage plants.

A definite policy has not been determined. We wanted first to have the authority by having the act approved and get royal assent so that we could go ahead and draft a regulation that would be applicable in this case. But the purpose of the act is to give this type of assistance either through grants or through loans for the construction and improvement of cold storage plants in fishing communities.

Senator PHILLIPS: What type of firm would be eligible? I am thinking of this as being a grant. There is the case of the sugar refinery making an announcement that I think they are opening three plants, three new fish plants.

Now, are they going to be eligible for a grant from the Government that is not going to be repaid in any way? Their company, as I understand it, is in no need of any financial assistance.

Surely we are not going to give them a grant from public funds that is not repaid.

Hon. Mr. ROBICHAUD: I would hope, Mr. Chairman, that any type of assistance would not be made retroactive. If this company is actually proceeding, as I understand they are, with construction of a fish processing plant and cold storage, I believe they do come under the aid to industry program in the designated area, which is only normal. But, personally, I cannot see how such a plant would come under this type of assistance.

This is not the purpose of this, and it certainly would not be made retroactive.

The CHAIRMAN: Was there any suggestion of that, senator?

Senator PHILLIPS: The way the act reads—

The CHAIRMAN: But I mean about the company you mentioned. I happen to know a lot about it.

Senator PHILLIPS: I just used that as an example. We have other companies that could move into the same type of operation and get a grant, and I can see this for a small company which wants to improve. But, really, for subsidiary companies of another firm, I was wondering if there was any need for them to be covered under this act?

Will the big freezing unit which gets assistance still be required to post a bond that its facilities will be available to all fishermen in the area?

Hon. Mr. ROBICHAUD: Right, because this bond is already covered by existing regulations. I cannot see how we could deviate from existing regulations unless we changed such regulations, but I do not think it is our intention to change existing regulations.

Senator PHILLIPS: In section 3, the introduction and demonstration to fishermen of new types of fishing vessels, it has been my view, Mr. Minister, that the Department of Fisheries has concentrated on developing draggers and have done a very good job in this regard, but that the inshore fisherman needs assistance in designing a type of vessel that will serve several purposes. Has the department any plans in this regard?

Hon. Mr. ROBICHAUD: Yes, Mr. Chairman, we have plans in this regard.

Two weeks ago today a meeting was held in Montreal with representatives of the Department of Fisheries for the different Atlantic provinces and Quebec. We are proposing to increase from 25 and 30 per cent to 50 per cent the grants available for the construction of approved types of small fishing vessels from 35 to 55 feet in length.

The purpose of this grant is to assist the inshore fishermen. We are convinced that we cannot ask a large number of inshore fishermen, as we have on the Atlantic provinces, to depend, for example, on two months' fishing for lobster only. It is not logical that a man should earn his living in two months of operation.

So we are increasing from 25 and 30 per cent to 50 per cent subsidies which will be applicable for the construction and equipment of fishing vessels of approved types.

We are now negotiating with the provinces concerned in order to specify the type of vessels that would be applicable.

I am sure that the honourable senator is aware that we have had difficulties in the past. I can show records where we are being asked to subsidize small vessels, 35-foot vessels, that have cost in the vicinity of \$700 or \$800.

So this is not the purpose of this program. We want to give the fisherman better equipment so that he can expand his operations, and we certainly have this in mind by increasing to 50 per cent this subsidy.

Senator PHILLIPS: Yes, but have you any facilities to help the fishermen design these vessels?

Hon. Mr. ROBICHAUD: Yes, definitely. We are going to provide the fishermen with special designs. We also have experts in the field who will supervise the construction, even if it is done by the fishermen themselves.

We are not going to prevent the fishermen, who have been building their own boats, from carrying on doing so, but we will supervise the construction and insist that the boats are built under certain specifications.

Then they will have at their disposition a type of vessel which will permit them to expand their operations.

The CHAIRMAN: Are there any other questions?

Senator KINLEY: Mr. Chairman, in my opinion, as far as getting the new bill through, it is rather a consolidation which places under the Department of Fisheries things that were under other departments. For example, the minister has now taken great liberty with regard to sanitation and research.

I think that is necessary. If we do not have clean, good fish, we will have no markets, and I think his efforts to have clean fish are salutary, because fish is a very delicate product which deteriorates very fast, and I think we have suffered already in Nova Scotia because of some parts of our fisheries being subject to deterioration, especially in the scallop fishery.

Now, with regard to construction and equipment of fishing vessels, we had that on our commission, it was innovated by the Maritime Commission some years ago, and it has been carried on quite successfully.

It is under the Fisheries Department and I think that is where it should be. It is all right.

Furthermore, the minister has permission to deal with provinces in payments, and to deal with them in co-operation, and, if he cannot, he can deal with the fishermen. I think that is salutary, because it gives him the ability to bargain in a better way: if the province will not co-operate, he can co-operate with the fishermen.

I think that is all right.

Now, there is very little else to the bill, except that it gives the Fisheries Department a chance to carry out the work for which it is best fitted.

It is a salutary bill, a good bill, and I support it entirely, and I think that the department is to be congratulated for the way it has carried on and for the progress it has made.

This idea of socialism—all you have to do is go back to the paper of two days ago and you will see that the president of the CPR spoke of the socialism of the CPR.

I have been in Parliament now for 50 years and we have been helping people, and trying to make progress for those 50 years, and I think that this bill is all right. I support it, Mr. Chairman.

Senator ISNOR: Mr. Chairman, I would ask the minister to be good enough to go over section 8, subsection 1, which reads:

All expenditures for the purposes of this Act shall be paid out of money appropriated by Parliament therefor.

and section 8, subsection 2.

My question is: has that money been included in your estimates of this year?

Hon. Mr. ROBICHAUD: Yes, Mr. Chairman. We have a substantial amount of money already in the estimates to cover projects of this kind, and, as an example of the type of projects that would be covered, last year we had in the 65-66 estimates a substantial amount of money. We entered into a cost-sharing agreement with the different provinces, the Atlantic provinces and Quebec, and it is our intention to increase this activity.

For example, only last week we signed an agreement with Captain Lourmais. For those of you who do not know who Captain Lourmais is, he was the one involved in swimming, during the winter months, from Quebec to Montreal, almost the whole of the St. Lawrence waters. He is probably one of the best skin divers known.

We have retained his services. He has a special vessel equipped with valuable equipment. We have a contract with him now for the next eleven

months. He will be starting next week, I believe. His ship is being overhauled in Halifax now and he will do various type of work, experimental work for lobsters, scallops and oysters, and he will give us some information which we really need.

This is the type of projects that I mean could be covered under this bill.

Senator ISNOR: Your answer is yes, that you have the money?

Hon. Mr. ROBICHAUD: Yes, we have the money, but we will need more. At the rate we are going now we will probably have to come back on supplementaries to get additional amounts of money.

Senator SMITH (*Queens-Shelburne*): I hope you do, because the purpose of the bill will be better served.

Senator KINLEY: I omitted, Mr. Chairman, to say that I think this bill has some added interest for the inshore fishermen, which is good. I think the other people who are in need of help should be given assistance in the form of sanitation and cold storage facilities that will let them keep their product fresh. I think the minister has in here the ability to do those things.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable DAVID A. CROLL, *Acting Chairman*

No. 11

Complete Proceedings on Bill C-144,
intituled: "An Act to amend the Bretton Woods Agreements Act".

THURSDAY, MAY 12th, 1966

WITNESS:

Mr. A. B. Hockin, Assistant Deputy Minister,
Department of Finance.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE
The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Flynn	Molson
Aseltine	Gélinas	O'Leary (<i>Carleton</i>)
Baird	Gershaw	Paterson
Beaubien (<i>Bedford</i>)	Gouin	Pearson
Beaubien (<i>Provencher</i>)	Haig	Pouliot
Benidickson	Hayden	Power
Blois	Hugessen	Reid
Burchill	Irvine	Roebuck
Choquette	Isnor	Smith (<i>Queens-</i>
Cook	Kinley	<i>Shelburne</i>)
Crerar	Lang	Taylor
Croll	Leonard	Thorvaldson
Davis	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Dessureault	Macdonald (<i>Brantford</i>)	Vien
Farris	McCutcheon	Walker
Fergusson	McKeen	White
	McLean	Willis—(49)

Ex officio members: Brooks and Connolly (*Ottawa West*).
(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 11, 1966:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Leonard, seconded by the Honourable Senator Farris, for the second reading of the Bill C-144, intituled: "An Act to amend the Bretton Woods Agreements Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Leonard moved, seconded by the Honourable Senator Farris, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, May 12th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Aird, Aseltine, Beaubien (*Provencher*), Brooks, Cook, Crerar, Croll, Davies, Fergusson, Flynn, Gershaw, Gouin, Haig, Irvine, Kinley, Lang, Leonard, McKeen, Pouliot, Smith (*Queens-Shelburne*), Taylor, Walker and Willis.

In attendance: Mr. E. Russell Hopkins, Senate Law Clerk and Parliamentary Counsel.

In the absence of the Chairman and on motion by the Honourable Senator Beaubien (*Provencher*), the Honourable Senator Croll was elected Acting Chairman.

Bill C-144, "An Act to amend the Bretton Woods Agreements Act", was read and considered.

Mr. A. B. Hockin, Assistant Deputy Minister, Dept. of Finance, was heard.

On motion of the Honourable Senator Leonard, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the Committee's proceedings on the said Bill.

On motion duly put it was resolved to report the Bill without any amendment.

At 10.15 a.m. the Committee adjourned to the call of the Chairman.

Attest.

John A. Hinds,
Assistant Chief Clerk of Committees.

REPORTS OF THE COMMITTEE

THURSDAY, May 12th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill C-144, intituled: "An Act to amend the Bretton Woods Agreements Act", has in obedience to the order of reference of May 11, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

THURSDAY, May 12th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill C-144, intituled: "An Act to amend the Bretton Woods Agreements Act", reports as follows:

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

DAVID A. CROLL,
Acting Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, May 12, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill C-144, to amend the Bretton Woods Agreement Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator DAVID A. CROLL, Acting Chairman, in the Chair.

The ACTING CHAIRMAN: We have before us Bill C-144, an act to amend the Bretton Woods Agreement.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The ACTING CHAIRMAN: We have with us Mr. A. B. Hockin, Assistant Deputy Minister of the Department of Finance, who will make a statement to open the proceedings.

A. B. Hockin, Assistant Deputy Minister, Department of Finance: Mr. Chairman and honourable senators: The statement that I shall make to you will be brief. Senator Leonard in introducing the bill into the Senate on Tuesday gave all the basic facts about the purpose of the amendment, and I do not think there is really much more that needs to be said.

The two clauses that are before you are first of all a clause to increase Canada's subscriptions to the International Monetary Fund and to the International Bank for Reconstruction and Development. These are both, as Senator Leonard explained, increases which we have felt were appropriate in the circumstances within the general framework of the increase proposed for the quota in the International Monetary Fund.

There are really two parts to the quota increase in the Fund. One is a general quota increase which applies across the board to all members. The other part is a special increase which applies to a limited number of members to bring their quotas more in line with the growth in their economic activity and their international trade. Because Canada's growth has been particularly rapid in the period since the last amendment, it was considered appropriate by the other members as well as by Canada that she should have a special quota increase in addition to the general quota increase which applies to all members.

The increase which is proposed for the International Bank really takes into account the special quota increase only, because there is not a general increase in the over all subscription to the International Bank. Once again, the increase is a special one. It comes about by reason of the fact that it has been agreed that the two organizations should keep their quota arrangement pretty well in parallel; and because we were having a special quota increase in the Fund which changed Canada's relative position as a contributor to the Fund, therefore it was necessary to do the same thing in the International Bank.

The other amendment proposed, which is a minor one, changes the date of the submission of the annual report to Parliament, on Canada's part in the International Monetary Fund to the International Bank. This is really done for matters of convenience affecting both the Canadian submission and the preparation of it and the basic facts that have to go into it by the staffs of the two organizations. It is a purely procedural amendment to make easier the annual report to Parliament.

I do not think there is anything further I need to say.

The ACTING CHAIRMAN: Any questions?

Senator LEONARD: Senator Croll, perhaps Mr. Hockin has not had an opportunity of seeing yesterday's *Hansard* of the Senate. I might mention to him that in dealing with the bill, Senator Brooks, the Leader of the Opposition, brought into his discussion the matter of a new reserve asset, which he mentioned I had not dealt with in my presentation. I explained that I did not think it was strictly relevant. Nevertheless, I think that if Mr. Hockin could give us some information it would be helpful, not only to Senator Brooks but to all members of the committee.

Mr. HOCKIN: Excuse me, I had not seen this reference or I would have said something about it.

I do not know whether honourable senators have seen the presentation which we gave to the House of Commons committee. It was a fairly detailed one, and I think perhaps you would not want me to go into it in detail here. I am quite prepared, if you wish, as an alternative, to prepare copies and have them provided for you, of a general Canadian paper which we presented, to describe to some extent some of our thinking at that time.

The ACTING CHAIRMAN: Appendix "D" of the Minutes of the House of Commons of March 31?

Mr. HOCKIN: Excuse me, not Appendix "D". Appendix "D" is the press release which was given. It is actually given at the beginning of the evidence which I gave, beginning on page 201, right in the text of the evidence.

The ACTING CHAIRMAN: Can you summarize that?

Mr. HOCKIN: Yes. I would summarize that, and if you would like to have copies of it we can make them available to you.

The general situation is this, there is general acceptance on the part of many of the industrialized countries of the world that the supply of traditional forms of reserve assets which countries hold—either the Central banks, in some cases, or their exchange funds, as in the case of Canada—is not likely to increase sufficiently to keep up with the general increase in international trade.

So far, the traditional forms of assets have been gold and certain reserve currencies—in our case, essentially the United States dollar. The United States dollar, as honourable senators know, is getting into a bit of a difficulty in the world because of their balance of payments problems, and the United States Government has declared its intention to bring its own balance of payments into equilibrium. To the extent that they are able to do so, the supply of United States dollars which would be available to the rest of us to hold in our reserves will disappear. We will be left only with those United States dollars we already have. There could be some reshuffling among the members, but the overall supply will not go on increasing as it has in the past.

The supply of gold is also under certain limitations because of the gradual running out of supplies and the price people are prepared to pay for it.

Therefore, when you add the two of these together it seems clear that in the medium term outlook we are not going to have adequate supplies of reserves to keep international trade flowing smoothly. If people do not have enough reserves they become frightened of any disequilibrium in their balance

of payments. If they have a deficit they take quick and vigorous steps to restore the equilibrium. If they have a surplus they are not prepared to adjust, and are happy to have any additional reserves they can get their hands on and put it away for the future, so to speak. In those circumstances, you could have the growth of restrictive trade practices reminiscent of the thirties. For a country dependent on international trade as much as Canada is, this could be a very serious development. Therefore, we have played an active role in discussions on ways of handling the situation. The place in which this is being done at the moment is the Group of Ten. That is a group of ten of the most industrialized countries in the world who were called together a few years ago to lend money to the International Monetary Fund to enable it to meet very heavy demands upon it by those very same members who may get into balance of payments difficulties.

Perhaps it is worth pointing out in passing that the benefit of this has been seen already in the fact that the International Monetary Fund has been able to give massive support of Britain during her balance of payments crisis, and it was able to have funds available and to do so thanks to the existence of the Group of Ten and their action to provide funds on a loan basis to the International Monetary Fund. This group is now discussing very actively what to do about this expected slow-down in the supply of international reserves, and Canada is a member of this group. We have, therefore, been discussing with our fellow members how we should go about providing some alternative. The Group has not yet reached agreement. We are working hard on it, but you will have seen from discussions in the press that agreement does not come easily. There are real disagreements within the group, first of all, and most importantly, relating to the degree of urgency. There are some countries who feel the problem is not urgent and that if one moves too quickly in this front one, in fact, makes the situation worse because, they would say, "Those countries now in balance of payments difficulties"—and they have in mind very much Britain and the United States—"will ease up on their own efforts to bring their balance of payments back into proper equilibrium. Therefore", they say, "let us not be too fast about it."

Others say, "This is not the proper way to handle the problem. It is quite clear that the United States and Britain are both committed to doing something as quickly as possible. Once you have reached international agreement you have to go back to your own Parliament and convince them this is the proper way of handling things, and this all takes time. Therefore, let us not wait around and spend time in our initial thinking. Let us get it done so we have a scheme to put into place when we need it. Let us put aside the question of when we need it. Let us have the scheme ready."

This is what we have been trying to do. Agreement has not yet been reached, as I say. We are engaged in what I suppose you would now call negotiations. It started off as studies and analyses, and it is gradually shifting into the realm of negotiations, but these are still going on.

We have expressed certain views about the important characteristics which we think should be there. We have said we believe in a reserve unit of some sort which would be supported and backed by countries whose economic maturity and experience in international affairs and experience of international co-operation would give strength to the backing of the unit. We have said that it should also be available to all countries, not just to those who may be involved in the creation of the unit, and we have given other views as to how to make it attractive, how to make the system work. But these have been our own views we have tried to bring to bear on the problem, and we cannot say just how the solution will emerge.

I am leaving tomorrow afternoon for meetings all next week, to try to carry the discussions a stage further. We are aiming for a report to ministers late in June, and we hope that we will have something positive and forward looking to prepare for them.

Senator CRERAR: Where are the meetings to be held?

Mr. HOCKIN: They are held in various places.

Senator CRERAR: No, this one next week.

Mr. HOCKIN: In Rome next week. Most of them have been held in Paris, where the Group of Ten normally meets.

Senator CRERAR: I should like to ask a few questions, Mr. Chairman, to perhaps enlighten my ignorance on this matter. How many countries are members of the International Monetary Fund?

Mr. HOCKIN: It is 102 or 103 now. It is sometimes hard for us to keep up because they are always joining. It is either 102 or 103.

Senator CRERAR: Are they also members of the Bank?

Mr. HOCKIN: There may be one or two who are not. All the members of the Bank have to be members of the International Monetary Fund; but the reverse does not hold true, so there may be one or two who are not; but I believe that virtually all are members of both organizations.

Senator CRERAR: In the operation of the Bank and the Fund over the years, the two currencies that were regarded as reserve currencies were bound to the American dollar, am I correct in that?

Mr. HOCKIN: Yes. The French franc also to a certain extent within the French franc area acts as a kind of reserve currency, but on a smaller scale.

Senator CRERAR: How important a part did the French franc play?

Mr. HOCKIN: Not a very important part. The United States dollar has by far the greatest importance as a reserve currency.

Senator CRERAR: What strikes me is that your two reserve currencies behind the Bank and the Fund are a bit shaky today.

Mr. HOCKIN: Yes, they are each in balance-of-payment difficulties of one kind or another.

Senator CRERAR: What would happen, for instance, if France made its demand on American gold?

Mr. HOCKIN: Well, France has actually, Senator Crerar. They have announced and carried forward their purchase of U.S. gold, and I do not think they have many less dollars left to turn in for gold. I think they have turned almost all of their reserves into gold already.

Senator CRERAR: All their claims on American gold?

Mr. HOCKIN: Yes. There are very few left, I think.

Senator CRERAR: If my memory is not at fault, that does not match with some of the information given in the British weekly journals. I think mainly of the *Economist*.

Mr. HOCKIN: I think most of the claims of the French exchange holdings have been actually turned in and used to purchase gold from the United States. There are private banking claims; you may be referring to those.

Senator CRERAR: I am referring to gold, yes.

Mr. HOCKIN: The private banking claims, I mean, apart from the official claims. France said some time ago that they would turn all their official claims into gold, and they have done virtually that now, but there may well be some private banking claims, commercial claims of one kind or another, which have not yet been turned into gold.

Senator CRERAR: But they sort of hang over the situation, do they not?

Mr. HOCKIN: That is right, except that they hang over in much the same way that your claims against one of the Canadian chartered banks hang over their heads. Banking systems run on the assumption that not everybody is going to cash in his claims at the same time.

Senator CRERAR: Is it true that France, particularly, and some of the other European continental countries are a bit loath to go along with this?

Mr. HOCKIN: France in particular. Other countries have shared concern, but I think most of them accept the view that something needs to be done by way of planning now for an eventuality which they expect, and I should perhaps say this: that it is an eventuality which they want to come about. They want the United States to be in balance, and not to be supplying dollars to the world. So they recognize that, if they want this to come about and if the United States agrees that it should come about and is doing something about it, therefore, it is only reasonable that they should plan now for what reserves could be created after the supply of U.S. dollars dries up as they hope it will.

Senator CRERAR: Do some of these countries, France particularly and I think Germany, have a sort of desire to get back to the gold exchange standard?

Mr. HOCKIN: No, I do not think so. France is questionable, but I do not think the other countries really do.

Senator CRERAR: Suppose you got the new monetary unit—what is it? The “cru” or something they call it?

Mr. HOCKIN: It has been called a variety of names, but that was the first one attached to it.

Senator CRERAR: What would be the backing of that?

Mr. HOCKIN: It would be the currency of the major countries, such as the members of the Group of Ten which includes Canada. You might like to know who the members of the Group of Ten are.

Senator CRERAR: I think I have a pretty good idea.

Mr. HOCKIN: Fine.

Senator CRERAR: What concerns me is this: Suppose you get the situation where you are depending on the good nature of perhaps a score or two score or three score of countries as a backing for that currency. Suppose they get into trouble and they devalue, for instance. What effect has that got on your new monetary unit?

Mr. HOCKIN: This is one of the problems we have been discussing, Senator Crerar, and by and large I think the feeling is that there should be a value guarantee to every country's contribution to the backing of the unit so that, if they devalued, they would have to put up sufficiently more of their own currencies to bring their contribution back up to what it had been.

Senator CRERAR: Do you expect there to be a great rush to do that?

Mr. HOCKIN: It would be the agreement written into the overall arrangement.

Senator CRERAR: But suppose they commenced to make excuses, like the ten virgins did? I think it is the ten virgins; Mr. Chairman, you are the authority on Scripture.

Mr. HOCKIN: I suppose that in the international world one has to judge the bona fides of one's partners and, if one does not trust them, one does not enter into agreements with them.

Senator CRERAR: What bothers me about this thing is that Britain is making—I won't say a desperate attempt, that is too strong a word—she is

making a strong effort to stabilize her own currency, and it is not by any means certain that she is going to achieve it yet.

Now, the American dollar, with all the expenditures abroad that the United States have, in Vietnam and with the assistance they are giving others, is definitely in some difficulty.

Mr. HOCKIN: Yes.

Senator CRERAR: If you create a new monetary unit which would be backed by these two currencies, I think for a time it would be rather shaky.

Mr. HOCKIN: I think that it is likely, Senator Crerar, that the new unit would not come into being until both of these currencies had really achieved the balance of payment equilibrium, because as long as they are in deficit they are throwing up amounts of reserve currencies which other countries can hold and, therefore, in those circumstances you do not need the new reserve unit.

It is only when they come into balance that this shortage shows up, and when the shortage shows up they are by definition in balance and therefore stronger.

Senator CRERAR: If that happened, these two countries would have to frame their policies to avoid deficits in their balance payments and, generally, to make their own currencies secure.

Can they maintain that position?

Mr. HOCKIN: I think it depends upon their will to do so, and they have declared that they are anxious to do so.

Senator CRERAR: In the international conflict of ideas, there is no doubt, for instance, that as far as France is concerned there are certain measures of desire to go off by themselves. Will it not be pretty difficult to get the whole situation stabilized?

Mr. HOCKIN: It will not be easy. I quite agree. But I think we have achieved a considerable advance in the amount of co-operation and consultation, understanding of each other's problems, and understanding of the bearing of our own actions on the situations of others over the last five years, and I think that countries are working together, in fact, much, much more closely than they used to.

Senator CRERAR: In other words, when these countries look over the abyss, then they may act, is that it?

Mr. HOCKIN: I think they have seen a bit of the abyss already. I think they have seen the kind of restrictive world that they could retreat into, and I do not think any of them like it.

I think that there are differences of opinion as to the degree and as to how quickly and how vigorously countries should act to try to bring their international payments back into balance. But I think that this is pretty much a question of degree, not of kind, that everyone agrees that he must keep his own international payments situation very much to the fore in his own policies at home because of the impact on his partners—which either a surplus or a deficit of a protracted and large nature would have—and, therefore, I think everybody has a much clearer idea as to what his own responsibilities are than he did a few years ago.

Against that background I think that we are more likely to be able to get agreement about how to handle the international payments situation and get more confidence that we will all play the game together.

Now, this is one reason why I think most of the Europeans are a little reluctant to expand the club too widely. They say "We have been talking together now in one organization or another for a number of years and we have learned a great deal of this interaction of policies on each other. We accept this and, therefore, we are prepared to work with each other because we know that

the other guy is going to be prepared to play the game with us, but we are not so sure about some other countries which have not had this same experience." I think this explains why they like to keep the group rather small.

Senator CRERAR: Tell me if you can, and perhaps you are unable to do so or there may be reasons why you should not answer my question, but is there any definite information on the gold production in Russia?

Mr. HOCKIN: No, we have no definite information. There have been guesses made in the press but no one can really know.

Senator CRERAR: They are only guesses?

Mr. HOCKIN: Yes, only guesses.

Senator CRERAR: For these large purchases of wheat in various countries of the world the Russians so far have been able to produce gold to meet these things, have they not?

Mr. HOCKIN: They have, yes.

Senator CRERAR: It seems to me that the whole matter at the moment is rather fluid. I quite realize the effort being made by Canada and other countries to arrive at some modicum of stability in this matter and I certainly wish you well, because there are a good many difficulties in the way.

Mr. HOCKIN: Thank you. There are, certainly, and we know that.

Senator WALKER: There are two changes which I see in the annual report. One is clause 7. Getting back to clause 5, there is an increase of a certain amount. I suppose we are interested in why that arises and that that is what you are here to have approved this morning. Without going through the report in greater detail, can you in a word, because time is getting on, tell us why this particular increase is asked for at this time?

Mr. HOCKIN: Senator Walker, the general increase in the International Monetary Fund requested here is in two parts. The first one is an increase of 25 per cent in everyone's quotas—all members—because it was considered that it was necessary for the adequate provision of short-term credit for the international payments system to have this general increase. In addition, there is a special increase for a small number of countries over and above the 25 per cent, because they are countries where their own economies had grown faster in relation to other economies in the world and in order to keep the proportions right within the International Monetary Fund there are these special increases and there is a special increase for Canada included in this.

Senator WALKER: First we have the increase of 25 per cent?

Mr. HOCKIN: Yes.

Senator WALKER: And the other increase is all based on our gross national product?

Mr. HOCKIN: There is a formula. The gross national product is one element in it; the volume of international trade is another.

Senator WALKER: Is that applicable also to the other ten?

Mr. HOCKIN: Yes.

Senator WALKER: So they, in addition to the 25 per cent, have a pro rata increase, depending on their increased economy?

Mr. HOCKIN: The other countries who have accepted an increase, yes. They are not all the countries which are in the Group of Ten. This is a rather different group, but it applies to some other underdeveloped countries as well. The countries can do it for the same reasons as we have it.

Senator WALKER: So it is a yardstick?

Mr. HOCKIN: It is a yardstick, applied in a temperate way, because there are certain delicate relationships that have to be preserved between individual groups of countries.

Senator WALKER: You are satisfied about it?

Mr. HOCKIN: We are satisfied about it.

Senator BROOKS: When the Group of Ten was set up, was the main reason for setting up the council, to investigate the financial situation?

Mr. HOCKIN: No. The original purpose of setting it up, Senator Brooks, was to provide funds to the International Monetary Fund.

Senator BROOKS: That is really what I meant.

Mr. HOCKIN: Yes.

Senator BROOKS: Was this matter of reserves also one of the problems that they were to consider at that time?

Mr. HOCKIN: I do not remember whether it happened at the very first time it was set up, but very shortly after, they began to investigate this problem.

Senator BROOKS: Has the United States control over her own situation? You said that you know they are very much worried—I have been reading your reports, as a matter of fact. But can she control that herself, or is it such a large international matter that the thing might come to a head and then the council would have to make recommendations and legislation would have to be passed in order to look after this reserve?

Mr. HOCKIN: I think, Senator Brooks, that the United States is quite capable of doing this. As you can imagine, there are certain conflicts from time to time in policy directives. The policy objective of complete balance in international trade, international payments, might conflict in some measure with policies of international expansion. As long as the United States had surplus capacity and high unemployment, they felt they did not want to allow anything to interfere with their own objectives in trying to meet that situation. And they felt that the measure they took would not in fact interfere with their own internal objectives, nor that the measure they took about their own external position adversely affected other countries. Now, in that they came into some discussion, dispute, with their trading partners in Europe. As the United States has moved towards greater utilization of her own capacity and less unemployment, this conflict has not arisen as much. But I think there is no question about it, the strength of the United States economy is enormous and when they make up their minds to bring their external payments into balance, they are quite able to do so.

Senator BROOKS: I rather got the impression from reading the evidence before the other committee, in the Commons, that the United States was anxious for something to be done in order to relieve her of this great responsibility in supplying United States dollars to the Fund?

Mr. HOCKIN: They have said to the other countries who were discussing the matter, those other countries who have been the leaders of those who said the United States should no longer have a balance of payments deficit, an outflow of capital, that if they want the United States to recover its balance in its international payments, that by definition this means that they will no longer be providing dollars to the world, and if they do not provide dollars to the world something has to be put in its place.

Senator BROOKS: These countries were the most responsible countries outside of the United Nations so far as the world situation was concerned?

Mr. HOCKIN: That is right. They are the biggest countries, those able to bear a lot of the burden of responsibility of providing leadership and money to the rest of the world.

Senator BROOKS: Is it your opinion that legislation may have to be recommended later to do that?

Mr. HOCKIN: If agreement is reached on a new reserve unit, and some system to handle it, then quite clearly this will have to come back to Parliament for legislation—but I do not expect this within the next few months.

Senator BROOKS: Well, that is a very short time. How about the next few years?

Mr. HOCKIN: Oh, I would hope that we would be back to you within that period with legislation, Senator Brooks.

Senator CRERAR: I would like to ask one more question. The whole matter is one so vast that it is very difficult to get one's mind around it all. The United States and Canada—and Britain at the moment to a lesser degree—are endeavouring to build up "the good society" that President Johnson spoke of in the United States.

The ACTING CHAIRMAN: The affluent society.

Senator CRERAR: We are talking about the war on poverty. This means more spending. I am not criticizing that for the moment but I am trying to look objectively at the picture. Is the ability of a country like the United States and Canada to conduct its affairs efficiently and to balance its budget, a factor in this whole equation?

Mr. HOCKIN: It is certainly a factor, Senator Crerar. The manner in which countries conduct their own internal policy affects their international payments position.

Senator CRERAR: Precisely.

Mr. HOCKIN: If they put too much burden on their economy, then their imports increase, their exports diminish, and they get a big balance of payments deficit.

Senator CRERAR: Precisely.

Mr. HOCKIN: If they are able to keep their own internal economies growing and developing in a balanced fashion, so that you do not get too much pressure put on it at any one time, then they should in fact be capable of turning out a greater and greater volume of goods and services which will be available to supply their own needs and the needs of some other countries who are less fortunate than we are.

Senator CRERAR: Then that is very true. I agree with that. But do you not meet a problem of expansion of world trade as a very desirable thing and if it can be brought about it is the final solution, mainly, to this question. How are we going to be paid for our exports finally? The United States and Britain—every country is trying to improve its exports. If, for instance, Russia had not accumulated very considerable reserves of gold she would not have been able to buy wheat from various countries to feed her people.

It seems to me—and it is difficult to state this accurately but the more uncertainty there is in the world, the greater the fear of war and uncertainty the more difficult it is to achieve the degree of confidence internationally that will enable you to have a solid foundation upon which to build the structure that may finally resolve this.

Mr. HOCKIN: You are quite right, senator, these things are all inter-related. You could put it the other way around too. You could say the extent we are able to produce a solid basis of co-operation and consultation which will lead to more trade, to more rapid economic growth, a wider distribution of the goods of this world, the less likely we are to have the conflicts which could lead to war.

Senator CRERAR: And the essential thing to reach that desirable state of affairs is to build international exchange.

Mr. HOCKIN: That is considered one of the elements we are striving for because we believe it helps the whole international situation. They are all tied together, you are quite right.

Senator CRERAR: About all we can say is there are many dragons on the way to this desirable state of affairs.

Mr. HOCKIN: Yes, many, and they have very sharp teeth, if that is what dragons have.

The ACTING CHAIRMAN: No further questions? May I report the bill?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Thank you, Mr. Hockin.

Mr. HOCKIN: Thank you, Mr. Chairman.

The committee adjourned.



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First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 12

Complete Proceedings on Bill C-169,

intituled: "An Act to amend an Act to amend the Combines Investigation Act and the Criminal Code".

WEDNESDAY, MAY 25th, 1966

WITNESSES:

Privy Council: The Honourable Guy Favreau, President; *Department of Justice:* J. J. Quinlan, Deputy Director, Investigation and Research.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON

BANKING AND COMMERCE

the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Hugessen	Reid
Blois	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Kinley	Taylor
Cook	Lang	Thorvaldson
Crerar	Leonard	Vaillancourt
Croll	Macdonald (<i>Cape Breton</i>)	Vien
Davis	Macdonald (<i>Brantford</i>)	Walker
Dessureault	McCutcheon	White
Farris	McKeen	Willis—(49)
Fergusson	McLean	
Flynn	Molson	

Ex officio members: Brooks and Connolly (*Ottawa West*).
(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Friday, May 6, 1966.

"Pursuant to the Order of the Day, the Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Hugessen that the Bill C-169, intituled: "An Act to amend an Act to amend the Combines Investigation Act and the Criminal Code", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Crerar, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 25th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.45 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Blois, Connolly (*Ottawa West*), Croll, Davies, Dessureault, Fergusson, Flynn, Gelinas, Gershaw, Gouin, Haig, Hugessen, Irvine, Isnor, Kinley, Leonard, Macdonald (*Cape Breton*), McCutcheon, McLean, Molson, Paterson, Pearson, Pouliot, Roebuck, Taylor, Thorvaldson, Walker and Willis. (30)

In Attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-169, "An Act to amend an Act to amend the Combines Investigation Act and the Criminal Code", was read and examined.

On Motion of the Honourable Senator Thorvaldson it was RESOLVED to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-169.

The following witnesses were heard:

PRIVY COUNCIL:

The Honourable Guy Favreau, President.

DEPARTMENT OF JUSTICE:

J. J. Quinlan, Deputy Director, Investigation and Research.

On Motion of the Honourable Senator Leonard it was RESOLVED to report the said Bill as amended, which amendment appears in the Report of the Committee printed as part of the proceedings of this day.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, May 25, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill C-189, intituled: "An Act to amend an Act to amend the Combines Investigation Act and the Criminal Code", has in obedience to the order of reference of May 6, 1966, examined the said Bill and now reports the same with the following amendment:

1. *Clause 1*: Strike out lines 22 to 28, both inclusive, and substitute the following:

- (b) the thirtieth sitting day of Parliament next after the day on which any resolution of either House of Parliament, based on a notice of motion in that House signed by any ten members thereof and made in accordance with the rules of that House that this section cease to be in force is concurred in by the other House,

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, May 25, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill C-169, to amend an Act to amend the Combines Investigation Act and the Criminal Code, met this day at 9.30 a.m. to give consideration to the bill.

Senator **SALTER A. HAYDEN** in the Chair.

The committee agreed that a verbatim report be made of the committee proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The **CHAIRMAN**: Honourable senators, Bill C-169 is not a stranger to us. We have had it quite a number of times before us and here it is again, extending the period of time within which any action of certain organizations engaged in fishing, fish processing or merchandising of fish business, out on the west coast, may not be said to be in violation of any provision of the Combines Investigation Act.

There was some debate on this in the Senate. The former Minister of Justice, the Honourable Mr. G. Favreau, is here in connection with certain aspects of the bill; and Mr. J. J. Quinlan, Deputy Director, Investigation and Research, of the Department of Justice, is here to answer questions generally in relation to the facts.

I presume we do not need a statement as to the purpose of this bill. we have heard it many times, so if you have any questions now is the time to ask them.

Senator **ASELTINE**: Mr. Chairman, could we have some explanation as to what happened to certain court proceedings, and why they have not been brought to a conclusion?

Mr. J. J. Quinlan, Deputy Director, Investigation and Research, Department of Justice: The court proceedings have been brought to a conclusion, senator. They were completed in 1962 or 1963. There were seven actions, I believe, six in British Columbia and one in Ontario.

Senator **ASELTINE**: What was the result?

Mr. QUINLAN: The Supreme Court of Canada ordered that the commission, in hearings, before giving the parties full opportunity to be heard, should give them such of the documents and such of the oral evidence as was relevant to the charges against them in the statement of evidence submitted by the director.

The matter has been in abeyance since that time, because of the appointment of the federal-provincial committee to examine price and wage disputes in the fishing industry. That committee was appointed in the latter part of 1963 and submitted its report last year.

The **CHAIRMAN**: So these proceedings, even though given the green light as far as the production of documents is concerned, have not gone ahead?

Mr. QUINLAN: No. The Chairman of the commission stated that, in view of the recommendations of the federal-provincial committee, he thought he should hold the matter in abeyance pending a decision as to policy of the respective governments in dealing with these recommendations.

Senator ASELTINE: What were the recommendations?

Mr. QUINLAN: Basically they were that the negotiation procedure should be formalized and taken out of the Combines Investigation Act, with appropriate safeguards. Then there was a recommendation for setting up mediation procedure and negotiations between the fish packing company and the fishermen, with the idea of having things settled before the salmon runs came, as there was not only the problem of the resource itself but also a conservation problem.

The CHAIRMAN: You have used a couple of expressions which I would like to know something about. You speak of "appropriate safeguards". Did they say what they meant by that?

Mr. QUINLAN: No, they did not.

Senator ROEBUCK: Where is that report?

Mr. QUINLAN: It was tabled in Parliament last September.

Senator ROEBUCK: In the Commons? Not in the Senate?

Mr. QUINLAN: I do not believe so.

Senator ROEBUCK: Is it available?

Mr. QUINLAN: I think copies would be available.

Senator ROEBUCK: Do you not think we should have it?

Senator CROLL: Why should it not have been tabled in the Senate?

Senator CONNOLLY (Ottawa West): I would think we would table all of these in the Senate.

Senator ROEBUCK: How do you justify this continued extension of time for these people to do as they like in the matter of price and everything else, in competition? How do you justify the continued immunity until such time that you have asked us to continue this extraordinary bill?

Mr. QUINLAN: I think the earlier delay, senator, was due to the court proceedings. At the time it was first introduced, it was not anticipated there would be these court proceedings. Then they did not go on for two or three years.

The reason for the continuation in these latter two or three years was the appointment of the committee. I understand this is now a matter of discussion between the governments of Canada and British Columbia as to the extent to which these recommendations of the committee are to be accepted.

The CHAIRMAN: Have not proceedings been commenced at the instance of the Combines Investigation authorities in relation to the transactions?

Mr. QUINLAN: Well, it was an inquiry under the act. A statement of the evidence was submitted to the parties.

Senator THORVALDSON: What would the date of that original inquiry have been?

Mr. QUINLAN: It started originally in 1956, and the statement of evidence was submitted in 1957. The proceedings for injunction began later on in 1959 or the beginning of 1960.

Senator THORVALDSON: This legislation was passed in 1959 for the first time and for the purpose of stopping the inquiry and giving immunity to certain people.

Mr. QUINLAN: I understand there was a strike threatened in the industry in the summer of 1959. What happened was that after the statement of evidence was submitted, the directors of the companies said that until their position was

clarified they did not think they should negotiate as a group with the fishermen as a group but should post prices instead. The fishermen did not want this and threatened to strike.

The CHAIRMAN: This is an immunity being granted effective from 1959, and if we pass this bill it will be effective down to December 31, 1967, and if certain steps are taken even to a later date. If there is any merit in granting this immunity, possibly our laws are too broad and should be amended in general terms rather than picking out particular people who are to receive this immunity.

Mr. QUINLAN: I think the position taken by the different governments in this situation was that they wanted to have more information before them such as is now included in the recommendations of the federal-provincial committee. They didn't want to deal with this in a piecemeal fashion.

Senator ROEBUCK: But it is piecemeal. How tight is the monopoly out there now? If I buy a boat can I go out there and fish and sell my fish to the packers?

Mr. QUINLAN: I believe licensing is fairly free.

Senator ROEBUCK: But the agreement between the fishermen and the packers is ironed out. Don't you have to belong to the fishermen's association to sell your fish?

Senator CONNOLLY (*Ottawa West*): Don't you have to sell it at the agreed price?

Mr. QUINLAN: There is a certain minimum price; prices may go above it but not below.

Senator ROEBUCK: Is it the position that there are people who do not belong to the fishermen's association and who are actually catching and selling fish to the packers?

Mr. QUINLAN: The last time I had dealings with this there were some who did not belong to the association—they did not belong to the union or to the native brotherhood. Of course, the vast majority do belong to the union or to the native brotherhood which is the Indian organization.

Senator ROEBUCK: This gives immunity exclusively in the areas of fishing and price.

Mr. QUINLAN: Price, remuneration and other conditions under which fish will be caught and supplied.

Senator ROEBUCK: What are the other conditions then?

Mr. QUINLAN: I think it might be fishing conditions and things of that nature. I think this refers to a matter of agreement between the companies and the fishermen for supplying certain facilities.

Senator ROEBUCK: Are you in a position to say that the other conditions apply to everybody whether they belong to the association or not?

Mr. QUINLAN: It is my understanding when they set up these facilities they are available to the fishermen bringing fish to that particular company.

Senator ROEBUCK: Irrespective of whether they belong to the organization or not?

Mr. QUINLAN: That is right.

The CHAIRMAN: Is there any priority in the acceptance of this fish?

Mr. QUINLAN: It is my understanding that a representative of the fish packers will go out and pick the fish up from the fishermen on the grounds.

Senator CONNOLLY (*Ottawa West*): But is it on the basis of a contract?

Mr. QUINLAN: Yes, the fishermen will contract to supply the catch to a company and that company may agree to supply him with loans and things like that.

Senator THORVALDSON: Rather than continue these bills giving immunity from year to year, it would seem to me that it would be more appropriate if a study were made of certain situations in Canada of which fishing is one. I was in agreement with the original purpose of this bill because I know something of the fishing industry from having been close to it at one time. This may apply to various other provinces, but I know that in my own province of Manitoba the provincial government in the last 30 or 40 years has found it necessary to resort to various expedients in order to assist fishermen in their efforts to obtain prices. This particularly applies in circumstances where in one year the catch may be quite large and in the next year it may be quite small. It is a very difficult problem from a commercial point of view and from the point of view of the fishermen. I think at some time there should be a study made of this whole problem in relation to fishing and other matters and an amendment made to the Companies Act to take care of certain situations in Canada permanently. One of those, as I said earlier, is the fishing industry which, as you know, has divided jurisdiction between the federal and provincial governments.

The CHAIRMAN: You refer to the Companies Act—you mean, I presume, the Combines Act?

Senator THORVALDSON: Yes, I do. This inquiry or study could deal with other situations as well. I make that recommendation with the point in mind that the combines legislation in Canada should be brought up to date to meet the changing conditions of the last few years.

The CHAIRMAN: The circumstances laid down under which certain things are illegal certainly need very careful consideration.

Senator CONNOLLY (*Ottawa West*): I would like to ask Mr. Quinlan why this legislation applied only to the British Columbia coast. I understand the reason is that other areas are quite different. Is that so?

Mr. QUINLAN: I do not know if that is entirely so, but the purpose of applying it to the British Columbia fishing industry is that a strike was threatened there in the first place, and then the issue arose as to whether or not it would be in breach of the Combines Act.

The CHAIRMAN: You mean to say that one way to avoid prosecution under the Combines Act is to be an important segment of the community, so important that if you threaten a strike, notice is taken and you may ultimately end up with immunity; is that so?

Mr. QUINLAN: I would not say that. I think conservation of the resource is perhaps one of the most important reasons.

The CHAIRMAN: But then the fish may die out there.

Senator ROEBUCK: But is not the conservation of a resource the responsibility of the province and of the dominion? Surely what should be enacted here rather than immunity from the criminal law is some regulation with regard to fishing, or perhaps some departmental power to provide regulations that will apply to all parties.

Mr. QUINLAN: The Department of Fisheries does have such regulations now.

Senator ROEBUCK: Why do you need immunity in a situation like this?

Mr. QUINLAN: The problem was considered to be a special one because there can be a question of too great an escapement.

Senator ROEBUCK: I took objection to this bill when it was introduced on the first occasion in 1959, and I have taken objection on every occasion it has been reintroduced. I have based my objection on the basis of the welfare of the

general public and their protection from those who wish to combine to set prices, and so on. Can you give immunity to one group and not to another simply because of a threat to strike? If you give exemption to one, other groups will find good reasons for exemption as well. There are always plenty of reasons. I do not know that the case of the fishermen is very much different from that of many other groups.

Senator LEONARD: Is there not a very real question in this situation as to whether or not this type of association or this type of agreement is in restraint of trade?

Mr. QUINLAN: That is one of the issues.

Senator LEONARD: We have to decide whether or not it is in the public interest.

Senator ROEBUCK: That is very important. It must be in the public interest, and we must look into it from the point of view of whether or not it conflicts with the Criminal Code.

Senator MACDONALD (*Cape Breton*): Did not the fish buyers rather jump the gun and say that if there was a taint of illegality they were not prepared to go ahead?

Mr. QUINLAN: The statement they made after the submission of the statement of evidence was that they did not think they should negotiate further.

Senator CONNOLLY (*Ottawa West*): There was a very minor question raised, and we didn't get an answer to it. There was a reference to section 411 of the Criminal Code—has this section since been struck out? I gather that by taking it out you are reverting to the situation before it was enacted.

Mr. QUINLAN: Yes.

Senator CONNOLLY (*Ottawa West*): And I understand the provisions of section 411 are now found in other places.

Mr. QUINLAN: They are now in section 31 (1) of the Combines Act.

Senator MACDONALD (*Cape Breton*): I have no objection whatever to the principle of the bill. If we are going to have this we are going to have it. The only thing I object to is changing it from year to year. This subclause (b) is some kind of monstrosity as far as legislation is concerned. I would like to see this amended so that all the words after the word "fishermen" in line 19 would be deleted. Then instead of having the 31st day of December, 1967 you could make it for five or ten years.

The CHAIRMAN: Well, Mr. Favreau is here to speak on this so I shall ask him to say a word or two on that point.

Hon. Guy Favreau, President of the Queen's Privy Council for Canada: Gentlemen, I think I shall leave here a little bit frustrated because it is pleasant to be sitting next to the chairman of the committee and listening to the discussion which has taken place and which has been very enlightening. These items which are covered in this particular legislation have opened very many views and have shown us to what extent there is a requirement to try to deal with this matter once and for all in a manner which should be final. I do not wish to go back over the discussion which has taken place with respect to the merits of the act.

I think that the information before the committee is quite complete in so far as this is concerned. All I want to say is that it is my very personal view that it would be in order to continue this exemption for a certain time at least, in view more particularly of two factors. First there is the fact that Parliament already has extended these exemptions three times, secondly, we are now in a situation where the exemption can be really fruitfully made use of. We were not in the

case of the previous exemptions at the stage where we are at this moment when the two governments, the British Columbia Government and the federal Government, are in a position, in the light of the report of the federal-provincial committee, to examine the question in depth so as to find what is the best solution finally in the public interest.

If the extension is now given by Parliament, I can say this as a minister—and I take responsibility for these words—that it is the full responsibility of the Government to see to it, once and for all, that further extension be made use of so as to finalize the matter.

There are two questions mainly which are in cause here. The first one, of course, is whether or not this industry, as other industries, as has been very pointedly remarked, ought to be exempted. The second is one that concerns the application of section 4 of the act and which originally gave rise in great part to the discussions in connection with these matters. That is whether section 4—which reads as follows:

Nothing in this Act shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees.

—ought to be broadened, more precisely defined or amended in some way.

I personally wish to tell the committee that it is my clear intention, if the extension is granted, to look at this particular aspect of the application of the act within the context of the much broader field of the philosophy of the act as such and its particular ramifications.

As to the remark which has just been made with respect to the system or device, if I may call it thus, proposed in subsection (b) of section 1 of the act to provide for the end of the extension after 18 months, I want to say this. Because the Government is fully determined that this will be the last time that we will be asking Parliament for an exemption, I have thought it would be advisable to ask for this particular 18-month period, within which I truly believe the matter may be finalized, and to provide for some flexibility in case it should take somewhat longer than 18 months, which I very sincerely hope it will not, so I will not have to come back to Parliament again asking for three months or six months. However, I do agree that in the system which is proposed in the bill the reference for terminating the extension period after 18 months is to a motion proposed by at least 10 members of the House of Commons and passed by the House of Commons. I will admit that the thought has occurred to me that this might in certain parts be interpreted as impinging on the privileges of the Senate as being one of the two chambers of Parliament. The reason why I thought I might suggest the device which has been suggested is that, after all, it will always be up to the Senate, in its full authority as legislator, to agree or not agree by letting the period end by means of a motion in the House of Commons. As I say, as far as I am concerned, my only feeling was that this was a simple way to do it, but I hold no brief for that particular type of legislative action.

It has been remarked before the Senate that the House of Commons and the Senate, Parliament, already have in the case of divorce delegated similar authority to the Senate itself to proceed by way of resolution instead of by a bill passed by the two houses. I must admit that in the case of divorce there may be some kind of appeal to Parliament by means of a motion introduced in the other house. So, if there is any feeling that the Senate authority might in any way be abridged or impinged upon, I say that personally, at least as the minister responsible here, I would have no objection to the Senate stating that after 18 months the period of extension may end by way of a motion proposed by at least 10 members of either house, but adopted by both houses. So far as I am concerned, it would be just as agreeable to me, if it is being more in

accordance with the rules of Parliament and if it is not found more bulky or less efficient.

I have here—and I may leave it with your chairman—an alternative way of spelling out subparagraph (b). If you do not mind, I will read it to you.

The CHAIRMAN: Very well.

Hon. Mr. FAVREAU: Subparagraph (b) could be replaced by the following:

the thirtieth sitting day of Parliament next after the day on which any resolution of either House of Parliament, based on a notice of motion in that House signed by any ten members thereof and made in accordance with the rules of that House, that this section cease to be in force is concurred in by the other House,

Senator ROEBUCK: Why not make it both houses? What is the necessity for having the resolution become effective on the passing of one of the houses?

The CHAIRMAN: You mean it might originate in either house?

Senator ROEBUCK: No, not in either house, but both houses.

Hon. Mr. FAVREAU: With the system I am now proposing as an alternative the motion could originate in either house, but would come into force when adopted first by the house in which it originated and then by the other house.

Senator ROEBUCK: Why not make it both houses? It is Parliament if it is adopted by both houses, and you get away from this very objectionable idea of one house being able to legislate.

Senator LEONARD: This is the way it is, Senator Roebuck.

The CHAIRMAN: Let me read the proposed amendment again:

the thirtieth sitting day of Parliament next after the day on which any resolution of either House of Parliament, based on a notice of motion in that House signed by any ten members thereof and made in accordance with the rules of that House, that this section cease to be in force is concurred in by the other House,

Senator ROEBUCK: It is passed in one and concurred in by the other?

Hon. Mr. FAVREAU: Yes.

Senator LEONARD: Is it clear that a notice must be given by December 31, 1967?

Hon. Mr. FAVREAU: After.

Senator LEONARD: Then it could go on for years?

The CHAIRMAN: That is right. It is putting an indefinite extension on December 31, 1967.

Hon. Mr. FAVREAU: With the restriction that any time after the 18 months, if the members of the Senate, for instance, felt that the exemption should cease, then ten members could introduce a motion which, if passed by the Senate and concurred in by the House of Commons, would terminate the extension.

The CHAIRMAN: I think there should be a limit after December 31, 1967, within which you could introduce such a motion. Otherwise you have an indefinite extension.

Senator ROEBUCK: At the present moment there is no limitation. At any time a certain number of us can bring in a resolution, and that is that.

The CHAIRMAN: And that can go on forever.

Senator ROEBUCK: Yes, it can go on forever until somebody takes action. I do not like it.

The CHAIRMAN: Then the date of the 31st day of December, 1967, is meaningless in the circumstances.

Senator ROEBUCK: They get it to the 31st December in any event. It is after that that action can be taken. I do not know, Mr. Favreau, if you are

determined that this shall not go on with these continuous extensions, why it is necessary to have that indefinite period. Could you not put at least another six months on it, or something of that kind, and have done with it?

Senator CONNOLLY (*Ottawa West*): I suppose the answer to that would be that the result of the inquiry Mr. Quinlan established would not be available. I assume that that is the situation which is sought to be avoided.

Senator ROEBUCK: I would like to see the Government take on the responsibility of bringing this thing to a close.

Senator PEARSON: Mr. Chairman, may I ask a question? I assume the House of Commons passed this bill in its present form, so why does the minister now come forward with an amendment to this bill?

Senator CONNOLLY (*Ottawa West*): It is because of the good debate in the Senate, I would say.

Hon. Mr. FAVREAU: The debates of the Senate are always very enlightening, and that is one reason, but my view, and the view of the Government, is that the first way proposed is the most simple way of all. However, I come here today to tell you that if the Senate prefers to proceed otherwise then as far as I am concerned I hold no brief for the other.

Senator THORVALLSON: Mr. Chairman, my view is that something should be done, and done very soon, in order to bring about a degree of permanency to situations of this kind. It is my belief that there is no difference between the problem before us now and that of seven, eight or even ten years ago. If I recall correctly, three or four years ago Parliament passed legislation enabling exporters to get together and agree upon certain prices, and making them exempt from attack by the Combines authorities. Is not that right? That was another exemption to the combines legislation of this country.

I am of the view that this will remain permanent, but this may not be the best way of accomplishing it. We are dealing still with an agreement made in 1956 or 1957. There may be a better method devised of achieving this result, and in that respect I am thinking in terms of a review of the combines legislation which will take into account situations such as this, and the one that the bill which was passed a few years ago was designed to cover. Consideration should also be given to changing the combines legislation to make it more effective in the light of business developments in Canada during the past ten years.

The CHAIRMAN: I think that that is a good question to raise at this time, but not for the purposes of defeating this bill. It is possible the minister will pay attention to our thinking on the general subject.

Hon. Mr. FAVREAU: Mr. Chairman, I hate to quote myself, but as it is quite in accord with the point that has been raised I should like to read to the committee what I said in the House of Commons on May 5 last in the discussion of this particular bill:

I am not in a position to say whether it will be the intention or decision of the government to extend further the notion of "worker" within the meaning of the general extension. Hon. members will appreciate that it would be difficult and probably unfair for me to use the pretext of the narrow clause now before us to forecast a basic or general review of the principles of the act. But I might say at this time that within the next ten days or so I intend making a statement with regard to a governmental decision respecting a broader view of the Combines Investigation Act. However, for the moment, because government policy is involved and a general review of the act as such is not being discussed here, I think I should not state that policy.

I wish only to note that at the present time in the House of Commons the Government organization bill is being discussed, and the statement I referred to a little cryptically will probably be made this afternoon. It will meet, I think, to a great extent the opinion you have expressed.

Senator THORVALDSON: Thank you very much, Mr. Minister. I think that that is a very forward-looking view.

The CHAIRMAN: Is the committee ready to accept the amendment?

Senator ROEBUCK: The amendment is an improvement, undoubtedly.

The CHAIRMAN: Senator Roebuck, do you move the amendment?

Senator ROEBUCK: No, I do not move it.

The CHAIRMAN: That is one way of trying to tie you up. Honourable senators, you have the motion before you in the words of the minister, and it is that we strike out subparagraph (b) in clause 1 of the bill, and replace it by the draft that I read you moments ago. Does the committee wish it read again?

Hon. SENATORS: No.

The CHAIRMAN: Are you ready for the question?

Senator KINLEY: No, I should like to say something first.

The CHAIRMAN: Very well.

Senator KINLEY: In many places in the United States the fish is auctioned at the pier. I am referring to such places as the Boston fish market. The fish landed there is put up for auction. It may be that in British Columbia such a system of auctioning at the pier might be in the interests of the people. My main objection is to the fact that a labour union is exempt from the provisions of the act, but these people cannot very well be defined as workmen; they are shares-men, and they own the product they catch. If we are going to talk about the public interest then I would point out that it goes much wider than British Columbia.

It seems to me that this is an act, more than any other in my experience, that causes people to avoid making agreements which will get them into trouble, but those agreements are made just the same. When I find that the big institutions of this country, such as the banks and the automobile manufacturers, are asking the same price for their products I cannot believe that there is not collusion. Of course there is collusion, but the act is too drastic. Its main purpose is to avoid restraint of trade.

It was always my thought that Mr. Fulton's amendment cured the situation a bit. His amendment was to the effect that to contravene the act the agreement had to be in restraint of trade. I think, as a member of this committee, although I am not much acquainted with the law, that business principles should be considered, and that a second and even a third look should be had at this act, and it should be reformed quite a bit in the interests of business in Canada.

The CHAIRMAN: Is the amendment carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill as amended?

Senator ROEBUCK: No.

The CHAIRMAN: That is carried.

Senator ROEBUCK: On division.

The committee adjourned.



First Session—Twenty-seventh Parliament

1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 13

Fifth and Final Proceedings on Bill S-17,
intituled: "An Act to amend the Bankruptcy Act".

THURSDAY, MAY 26th, 1966

WITNESS:

Department of Justice: Elmer A. Driedger, Q.C., Deputy Minister.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Hugessen	Reid
Blois	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Kinley	Taylor
Cook	Lang	Thorvaldson
Crerar	Leonard	Vaillancourt
Croll	Macdonald (<i>Cape Breton</i>)	Vien
Davis	Macdonald (<i>Brantford</i>)	Walker
Dessureault	McCutcheon	White
Farris	McKeen	Willis—(49)
Fergusson	McLean	
Flynn	Molson	

Ex officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 9, 1966.

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Power, P.C., for the second reading of the Bill S-17, intituled: “An Act to amend the Bankruptcy Act”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, May 26th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Baird, Beaubien (*Bedford*), Benidickson, Blois, Burchill, Connolly (*Ottawa West*), Croll, Davies, Fergusson, Flynn, Gershaw, Haig, Irvine, Isnor, Kinley, Leonard, Macdonald (*Cape Breton*), McCutcheon, McLean, Molson, Pouliot, Smith (*Queens-Shelburne*), Taylor and Walker. (25).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill S-17, "An Act to amend the Bankruptcy Act", was further considered.

The following witness was heard:

DEPARTMENT OF JUSTICE:

Elmer A. Driedger, Q.C., Deputy Minister.

The Honourable Senator McCutcheon moved that clause 3, subsection (2), be amended.

The Honourable Senator Croll moved that clause 3, subsection (7), be amended.

The Honourable Senator Leonard moved that clause 3 be amended by adding thereto a *new* subsection (8).

On Motion of the Honourable Senator Haig it was RESOLVED to report the said Bill as amended, which amendments appear in the Report of the Committee printed as part of the proceedings of this day.

At 10.15 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, May 26th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-17, intituled: "An Act to amend the Bankruptcy Act", has in obedience to the order of reference of March 9th, 1966, examined the said Bill and now reports the same with the following amendments:

1. *Clause 3, page 4*: Strike out lines 26 to 29, both inclusive, and substitute the following:

"connection with a bankruptcy and examine any such books, records, papers or documents."

2. *Clause 3, page 5*: Strike out subsection (7) and substitute the following:

"(7) Where any book, record, paper or other document is examined or produced in accordance with this section, the person by whom it is examined or to whom it is produced or the Superintendent may make or cause to be made one or more copies thereof, and a document purporting to be certified by the Superintendent or a person thereunto authorized by him to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if it were proven in the ordinary way."

3. *Clause 3, page 5*: Immediately after line 37 add as new subsection (8) the following:

"(8) Notwithstanding anything in this section, the provisions of section 126A of the *Income Tax Act* apply *mutatis mutandis* in relation to any requirement pursuant to this section to give any information or produce any book, record, paper or other document, as though that requirement were a requirement under section 126 of that Act, and for that purpose, any references in section 126A of that Act to the Minister of National Revenue and the Deputy Minister of National Revenue for Taxation shall be read as references to the Minister and the Superintendent, respectively."

4. *Clause 6, page 6, line 42*: Strike out "shall" and substitute "may or may not".

5. *Clause 6, page 7*: Strike out subsection (4) and substitute the following:

"(4) The trustee, as a creditor, may not vote on the proposal."

6. *Clause 7, page 7*: Strike out section 32B and substitute the following:

"32B. (1) Where the creditors refuse to accept a proposal by an insolvent person a copy of which has been filed with the official receiver as required by section 35, the debtor shall be deemed to have made an assignment on the day the proposal was so filed; and the trustee shall either

(a) forthwith call a meeting of the creditors present at that time, which meeting shall be deemed to be a meeting called under section 68; or

(b) if no quorum exists for the purposes of paragraph (a), call a meeting under section 68 as soon as practicable;

and at either meeting the creditors may, by ordinary resolution, notwithstanding subsection (1) of section 6, appoint or substitute another licensed trustee for the trustee appointed under the proposal or affirm the appointment of that trustee.

(2) Where the creditors refuse to accept the proposal described in subsection (1), the trustee shall forthwith file a report thereof in the prescribed form with the official receiver and the Superintendent; and the official receiver shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 26.'".

7. *Clause 8, page 8*: Strike out subsections (10) and (11) and substitute the following:

"(10) Where the court refuses to approve a proposal by an insolvent person a copy of which has been filed under section 35, the debtor shall be deemed to have made an assignment on the day the proposal was so filed and the trustee shall forthwith call a meeting of the creditors under section 68, at which meeting the creditors may by ordinary resolution, notwithstanding subsection (1) of section 6, appoint or substitute another licensed trustee for the trustee appointed under the proposal or affirm the appointment of that trustee.

(11) Where the court refuses to approve the proposal described in subsection (10), the trustee shall forthwith file a report thereof in the prescribed form with the official receiver and the Superintendent; and the official receiver shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purpose of this Act as an assignment filed pursuant to section 26.

(12) No costs incurred by a debtor on or incidental to an application to approve a proposal, other than the costs incurred by the trustee, shall be allowed out of the estate of the debtor if the court refuses to approve the proposal.'".

8. *Clause 9, page 8*: Strike out lines 25 to 31, both inclusive, and substitute the following:

"36. (1) Where default is made in the performance of any provision in a proposal, or where it appears to the court that the proposal cannot continue without injustice or undue delay or that the approval of the court was obtained by fraud, the court may, on application thereto, with such notice as the court may direct to the debtor, and, if applicable to the trustee, and to the creditors, annul the proposal.'".

9. *Clause 9, page 9*: Strike out subsections (4) and (5) and substitute the following:

"(4) Upon the proposal being annulled, the debtor shall be deemed to have thereupon made an assignment and the order annulling the proposal shall so state.

(5) Where an order annulling a proposal has been made, the trustee shall forthwith call a meeting of the creditors under section 68, at which meeting the creditors may by ordinary resolution, notwithstanding subsection (1) of section 6, appoint or substitute another licensed trustee for the trustee appointed under the proposal or affirm the appointment of that trustee.

(6) Where an order annulling the proposal described in subsection (5) has been made, the trustee shall forthwith file a report thereof in the prescribed form with the official receiver and the Superintendent; and the official receiver shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 26.'".

10. *Clause 10, page 9:* Strike out line 18 and substitute the following:
“39A. (1) Notwithstanding section 39, where a bankrupt is in receipt of, or is”.
11. *Clause 10, page 9, line 22:* After “trustee” insert the following:
“, if directed by the inspectors or the creditors,”.
12. *Clause 14, page 13:* Strike out lines 6 to 15, both inclusive, and substitute the following:
“96. (1) A creditor who entered into a reviewable transaction with a debtor at any time prior to the bankruptcy of the debtor is not entitled to claim a dividend in respect of a claim arising out of that transaction until all claims of the other creditors have been satisfied unless the transaction was in the opinion of the trustee or of the court a proper transaction.”.
13. *Clause 17, page 14:* Strike out line 33 and substitute the following:
“(3a) A corporation may not apply for a discharge unless it has satisfied the claims of its creditors in full.”.
14. *Clause 18, page 15, line 37:* Strike out “paragraph (a)” and substitute “paragraphs (a) and (b)”.
15. *Clause 18, page 15, line 41:* Strike out “paragraph (a)” and substitute “paragraphs (a) and (b)”.
16. *Clause 18, page 16, line 5:* Strike out “paragraph (a)” and substitute “paragraphs (a) and (b)”.
17. *Clause 19, page 16, line 28:* After “assignment” insert “or a proposal”.
18. *Clause 19, page 17, line 12:* After “bankrupt” add “or as joint trustee to a proposal.”.
19. *Clause 22, page 28:* Strike out clause 22 and substitute the following:
“22. (1) Sections 1, 11, 12, 13, 14, 15 and 18 apply only in the case of an assignment, proposal by an insolvent person or receiving order filed or made on or after the day this Act comes into force.
(2) Subject to subsection (1) this Act applies in the case of any assignment, proposal or receiving order filed or made before or after this Act comes into force, but not so as to affect any order, rule, proceeding, action, matter or thing had, done, made, completed or entered into under the *Bankruptcy Act* in respect of any such assignment, proposal or order filed or made before this Act comes into force.”.

All which is respectfully submitted.

Salter A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, May 26, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill S-17, to amend the Bankruptcy Act, met this day at 9.30 a.m. to give further consideration to the bill.

Senator **SALTER A. HAYDEN** in the Chair.

The **CHAIRMAN**: Honourable senators, we are here to continue our consideration of the amendments to the Bankruptcy Act. There was one item outstanding in relation to the new section 3A of the bill. This is in connection with the form in which the provisions should appear in relation to seizure of documents and how they are dealt with, and the access of the person from whose possession they have been seized.

As you will recall, the last time we met we had with us the Honourable Lucien Cardin, Minister of Justice, Mr. E. A. Driedger, deputy minister, and, Mr. Roger Tassé, Superintendent of Bankruptcy. We had a full discussion and certain drafts have been prepared to reflect the views of the committee, but they did not appeal or were not acceptable to the department. They asked for further time.

That further time was granted and I had an interview yesterday with the minister and Mr. Driedger and Mr. Tassé. I am not sure anything definite developed out of it, that I need refer to at the moment because Mr. Driedger phoned this morning and said something had occurred to him that might be a solution and he would like to appear before us this morning. He is now here and he would like to say a few words.

Mr. E. A. Driedger, Deputy Minister of Justice. Honourable senators, the chairman has said we had a very thorough discussion yesterday afternoon. One thing became clear during that discussion, that fundamentally there is no difference in principle between us. I think we both have the same objectives in mind. From our point of view we want to put the Superintendent in the position where he can get information that will enable him to deal with these serious and urgent cases where offences have been committed or are suspected in relation to bankruptcy proceedings.

The concern of this committee, I believe, is that every effort should be made to protect the interests of the businessman whose documents may be seized by the Superintendent. The power of seizure extends beyond the bankrupt in the draft bill, and the Superintendent may well go into business premises that may or may not be directly involved in any misconduct, and if he takes away their current files and working papers it would be impossible for the man to carry on his business.

We had prepared a provision in the bill which we thought would protect sufficiently the interests of third parties. That, as I understand it, was not the view of the committee. We prepared a modification of it that we thought would give a little more protection, but, again the committee felt greater protection should be given to the third party businessman.

We considered very carefully the amendments which had been suggested by this committee, and while I will not go so far as to say they are unacceptable, we did have some serious doubts about their workability. I do not know whether it is necessary for me to go into this in detail, Mr. Chairman, but we are apprehensive that the provision that was prepared would make it very difficult, if not impossible, for the Superintendent to search and seize, or to carry out the obligations that would be imposed upon him by the suggested provisions.

This morning I should like to make a suggestion that perhaps will solve the problem for the time being. As I mentioned earlier, I do not think there is any difference in principle between us. The problem is to find a provision that is workable, but that will give the Superintendent the powers he needs, and that will give to businessmen the protection they should have.

I believe the minister told you, when he was here last, that a complete revision of the Bankruptcy Act is under way, and we hope shortly—perhaps in the next session—to come forward with a new bill. I believe some honourable senators suggested that in view of that plan the provision as prepared in this committee might pass, and if it turned out to be unworkable then it could be reviewed at the time of the revision. The minister, I believe, countered with the suggestion that the provision be left in the bill as it is, and that if any injustices or improper situations should arise, then an appropriate amendment could be made at the time of the revision.

I should like to suggest now that for the time being we might delete from this bill all power to seize and take documents away, so that the Superintendent would have power only to enter premises, to examine documents and make copies. That might not be adequate for our present purposes, but certainly it will give to the businessman complete protection because his documents cannot be taken away. Then, in the meantime we might have some experience; we might find out what kind of situation we are likely to encounter.

The ones that worry us at the moment are what I might call multiple seizures, where the Superintendent must move into two, three, four or more places simultaneously. We do not know what he is going to encounter, and we are not sure that he has the facilities to carry out a search and seizure in accordance with the amendments proposed. So, my suggestion would be that we make a few minor amendments—I could perhaps indicate them although I have not written them out—to the bill as it stands, and between now and the time the revision comes we can give further consideration to this, and in the light of our experience we might then be able to come up with a provision which, from our point of view, is workable and which, from your point of view, gives the businessman the protection he should have.

If you would revert to the bill I would suggest that in subclause (2) of the proposed new section 3A, line 26, where it says, "connection with a bankruptcy and", strike out the words "seize and take away" and substitute the word "examine". And then continue on, "examine any such books, records, papers or documents." Then strike out the rest, "and retain them until they are produced in any court proceedings." So that it reads simply:

...documents that may afford evidence as to an offence in connection with a bankruptcy and examine any such books, records, papers or documents.

Then, in subclause (7), page 5, line 21, strike out the word "seized", so that it reads, "document is examined or produced". Then in the next line strike out the last two words, "seized or".

The CHAIRMAN: Where is that?

Mr. DRIEDGER: That would be in line 22, the last two words, "seized or". Then it goes on:

... examined or to whom it is produced or the Superintendent may make or cause to be made one or more copies thereof. . .

and put a comma there and strike out lines 25, 26, 27, 28, 29, 30 and 31, and the words "seized or produced" in line 32.

That would remove from the Superintendent or his agents all power to take documents away. They would have to be left on the premises. They could be examined and copied there, but they could not be taken away.

The CHAIRMAN: The other side of the picture is that you must not go as far as to impede the Superintendent's function to root out fraud. However, I would think you would be in good order because your examination of the records on the premises might furnish fairly substantial evidence as to the commission of an offence, and in those circumstances you could invoke the search warrant provisions in the Criminal Code and go in and seize them at that time. That seems to make more sense than to do it initially. If it gets to the stage where there has actually been or appears to have been a violation of the provisions of the Criminal Code, I think the law has to take its course.

Senator LEONARD: The deputy minister has made a very sensible suggestion and has gone a long way towards helping solve the problem. As far as I am concerned, it sounds to me perfectly correct.

Senator BURCHILL: Under the present act has not the Superintendent that power of entering premises?

Mr. DRIEDGER: No, sir.

The CHAIRMAN: The trustee has the power.

Mr. DRIEDGER: The trustee has the power, but not the Superintendent.

The CHAIRMAN: The trustee's power is still in the act.

Senator CROLL: Mr. Chairman, in effect and for all purposes the witness has met the conditions that we set forth in our amendment. Perhaps, as you indicated, on examination there may be further proceedings. But that is the law, and we go along with it.

The CHAIRMAN: I do not think at that stage we should attempt to impede—

Senator CROLL: No, but it seems to me that the suggestion is a very good one, and I think we ought to accept it.

Senator McCUTCHEON: I so move, Mr. Chairman.

Senator KINLEY: Mr. Chairman, does the word "seize" in any way imply the right to take away; to take over the premises? If something is seized can it be taken away?

The CHAIRMAN: What you are asking is whether "taking away" is inherent in the word "seize"?

Senator KINLEY: Yes.

The CHAIRMAN: The word "seize" is being taken out of this section by the suggestion of Mr. Driedger.

Senator KINLEY: In every case?

Mr. HOPKINS: Yes, in every case.

Senator CROLL: It does occur to me from your reading—I do not have a copy of the bill before me—that this says "examine and take away". Will it permit the Superintendent to take away for the purposes of examination?

The CHAIRMAN: If you have any doubt about it we can say "examination on the premises".

Senator CROLL: Is that what you have in mind?

The CHAIRMAN: I thought that in the circumstances he would not have that authority. I am apprehensive about putting in the words "on the premises" because the owner might say: "take them away and look at them", and the Superintendent will say: "on the premises".

An Hon. SENATOR: Will he be able to make a photostatic copy?

The CHAIRMAN: I would ask our Law Clerk to give us his opinion on the principle the committee had in mind.

Mr. HOPKINS: I would say that this amendment safeguards the principle in its entirety. There is the question about privileged documents. Would it be necessary to protect those under the circumstances?

The CHAIRMAN: That is another one.

Mr. DRIEDGER: If I may be perfectly candid, sir, I will say I thought that by making this complete concession we might leave the question of solicitor and client privilege for the time being.

Mr. HOPKINS: Yes, that is what I thought. This amendment would be in lieu of the suggestions of the committee?

The CHAIRMAN: The solicitor and client privilege is something entirely different.

Mr. DRIEDGER: That is something that could be raised at the time we come in with the revision of the Bankruptcy Act. We can then reconsider this whole provision.

The CHAIRMAN: Why, if the principle is sound? It is the client's privilege. If he wants to assert it why should he not have the right to assert it? I know it was the view of the committee, and we drafted an amending paragraph accordingly.

Senator CROLL: Would you have that "solicitor and client" amendment read, Mr. Chairman?

The CHAIRMAN: Yes. This was actually drafted by Mr. Driedger's department.

Mr. HOPKINS: Yes, without prejudice.

The CHAIRMAN: It reads:

Notwithstanding anything in this section, the provisions of section 126A of the *Income Tax Act* apply *mutatis mutandis* in relation to any requirement pursuant to this section to give any information or produce any book, record, paper or other document, as though that requirement were a requirement under section 126 of that Act, and for that purpose, any references in section 126A of that Act to the Minister of National Revenue and the Deputy Minister of National Revenue for Taxation shall be read as references to the Minister and the Superintendent, respectively.

In other words, it is simply making the provisions with respect to solicitor and client privilege in the Income Tax Act applicable, with the appropriate changes in the Bankruptcy Act. Can you give us any particular or good reason why we should not insist on that?

Mr. DRIEDGER: We feel that perhaps this is an area in which we differ in principle. We feel that the provisions of the Income Tax Act are designed to meet an entirely different situation from that envisaged by the provision we have here. The procedure under the Income Tax Act is that a document in respect of which a privilege is claimed must be put into a sealed envelope without examination, and without making copies. An application must then be made to a judge to determine whether the privilege exists. It seems to us that this procedure, when it is applied to the investigation of bankruptcy irregularities, would frustrate the investigation.

The purpose of examining documents in many cases would be to ascertain who are involved in a suspected fraudulent transaction, and what the relationship between them may be. This would not be possible if the documents must be sealed up, and cannot even be examined. By the time you have gone through this procedure, it may be that documents in the possession of the persons involved would be gone. If they could be examined immediately it might well be possible to make seizures or investigations in other places before there has been an opportunity of destroying or concealing records.

Then, there is the further difficulty that companies involved in fraudulent transactions might keep some of their incriminating documents on deposit in their solicitors' offices, and in that way they could be concealed from the Superintendent.

The CHAIRMAN: Not for long.

Mr. DRIEDGER: Not for long, but we feel when you are investigating frauds and possible offences that time is of the essence. Even a delay of a day or two might be enough to frustrate an investigation. That is why we felt that at this stage it might be desirable not to deal with the question of solicitor and client privilege. It could be asserted, of course, if any proceedings are taken, but in the meantime we felt that the Superintendent should have the right at least to see the documents.

The CHAIRMAN: Of course, the privilege is non-existent the moment the document is disclosed, and the assertion of the solicitor and client privilege does not lead to the destruction of the document. All that happens is that the document is sealed up and treasured maybe in a trust company or elsewhere as the parties may agree until the question of privilege is settled.

We at an earlier time discussed with the Superintendent the time limits in respect of the taking of these proceedings. Under the Income Tax Act where the solicitor-client privilege is asserted you have 15 days in which to give notice of motion in order to go before a superior court judge and have him settle the question of privilege. The motion must be returnable within 21 days. But, after the judge has disposed of it there are all the rights of appeal, which may involve a reasonable length of time.

What I had suggested earlier, but which was not acceptable at that time, was that these times be materially cut down. In other words, I said that the notice of motion must be made within five days of the seizure, and the reference to the court must be had within another five days of the seizure, and that the decision of the judge must be final and without further appeal. That seems to me to be a rapid way of dealing with the matter, and preserving the right of solicitor-client privilege recognized in law. However, I have nothing now to indicate that that is acceptable to the department.

Mr. DRIEDGER: If I might interject, sir, I think the problem is that it is not a particular document in a solicitor's office that the Superintendent might be interested in, but that document might disclose one or two names of companies not known to the Superintendent which might be involved in the transaction. If he knows the names of those companies he can go to them and get the information he needs. But, if the document is sealed up and put away for a few days he does not know about the existence of these companies, and by the time he gets to the document it may be too late.

The CHAIRMAN: We talked on the last day about this, and the point was made that if there is that kind of evidence on file in a lawyer's office, for instance, then the moment the Superintendent goes in to make his seizure, as he told us, the grapevine will work and the news of the fact that he has been in there will be disclosed from that moment on.

Senator LEONARD: Does not the solicitor and client privilege extend through all levels of the civil and criminal law, and are not the same difficulties encountered in every aspect of the civil and criminal law in respect of the solicitor-client privilege? Therefore, the difficulties Mr. Driedger sets out are in existence all through. If that rule is broken here, then it can be broken just as easily in every other branch of the law.

Mr. DRIEDGER: The privilege does not exist under the seizure provisions of the Criminal Code.

The CHAIRMAN: That is right.

Senator LEONARD: Can not a search warrant be used here?

The CHAIRMAN: I would say that if the material examined, apart from that in respect of which privilege is claimed, discloses evidence in relation to some criminal offence, then search warrant procedures could be used. That seems to be the one point that is left unresolved as far as Mr. Driedger is concerned. Do you not think, Mr. Driedger, that the solicitor and client privilege should carry through until the act is presented and then you will see if it presents any difficulties in your rooting out these participants in bankruptcy frauds?

Mr. DRIEDGER: I thought that in this particular area it might work the other way, and that this is a matter which should be considered and dealt with at that time.

The CHAIRMAN: You have raised it so strenuously, and we now yield. How do we assert the position again?

Senator LEONARD: Mr. Chairman, I would not be prepared to yield. The two matters are entirely separate. Mr. Driedger has been most instructive with other suggestions, but that does not mean a compromise. This solicitor and client privilege is extremely important, and I think your suggestion of a remedy is necessary.

Senator BURCHILL: Mr. Chairman, I am not a lawyer and I hesitate to embark on this discussion in any shape or form. However, I did urge in the Senate, and also urged the lawyers in this committee, that the department be given every possible facility to put some teeth in this law which would enable them to control some of the fraudulent bankruptcies. I speak on behalf of victims of those bankruptcies. The department has been urging that it wants those powers in order to carry this out. I do not think we should put too many roadblocks in the way.

The CHAIRMAN: Senator, there are no roadblocks being put in the way.

Senator CROLL: Mr. Chairman, this section dealing with solicitor and client privilege is a matter of principle. I think it would be a mistake on our part to vary the dates or to make any changes. They have been working under the income tax law and they have never complained about not being able to reach whomever they wanted to reach under that solicitor and client privilege. It has been established for many years. If we leave it alone and follow along the same lines we will at least have been consistent, which is important in matters so serious as this. The minute we start playing with it by cutting down days here and there we are deviating from what is apparently an important principle.

The CHAIRMAN: From the point of view of Mr. Driedger, I wonder if the changes he has suggested, particularly in subparagraph (7) go far enough to give him the authority to make copies? I ask this question because in your language, Mr. Driedger, you only say "to examine".

Mr. DRIEDGER: Subparagraph (7) says:

Where any book, record, paper or other document is seized, examined or produced in accordance with this section, the person by whom it is seized or examined or to whom it is produced or the Superintendent may make or cause to be made one or more copies thereof...

The CHAIRMAN: I had struck out an earlier line.

Mr. DRIEDGER: "one or more copies thereof"; and then strike out after that.

The CHAIRMAN: All right. Dealing with the proposal made by Mr. Driedger in relation to subparagraph (2) of new section 3A, which is provided by section 3 of the bill, and where the reference is to "seize and take away", those words are struck out, and the word "examine" is inserted as indicated. It is a matter of record now. Will the committee support that amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: Then in subparagraph (7) the reference to "seized" is struck out in the proposal made by Mr. Driedger; the Superintendent is then left with the power to examine and the power to make copies. Is the committee in favour of that amendment?

Senator CROLL: I so move.

The CHAIRMAN: Agreed?

Hon. SENATORS: Agreed.

The CHAIRMAN: That prepares us for the question of solicitor and client privilege. The provision of this new section 3A, solicitor and client privilege, in the way we had it drafted, would come in as new subparagraph (8).

Senator McCutcheon: Mr. Chairman, if I may say a word on that, I think there is a great difference between the principles involved in the Income Tax Act and this act. Senator Croll suggested that we put that section of the Income Tax Act with appropriate amendments into this bill and not even cut down the delay as you have suggested.

It seems to me that the only person who can be adversely affected by the provision of the Income Tax Act and the delay involved is the Crown, which may lose revenue because of inability to catch up quickly enough.

We are dealing with an entirely different situation here. I want to support what Senator Burchill said a moment ago, that there should be no roadblocks here. The Superintendent could probably frustrate this section by using a certain amount of technique to start with.

My suggestion is that we not make the amendment that has been suggested, either in its original form or as you have suggested, and that the matter be left to see what happens until we have the total revised bill before us.

The CHAIRMAN: Any other viewpoints? I understand you are making a motion, Senator Leonard?

Senator LEONARD: I do not agree with Senator McCutcheon. I still support you, Mr. Chairman, as to the matter of speedy disposal.

The CHAIRMAN: Then in incorporating section 126A of the Income Tax Act you would suggest that the times be cut down and that there be no appeal from the decision of the judge in the first instance?

Senator LEONARD: Final decision by the judge in the first instance.

The CHAIRMAN: Any discussion on that?

Senator CROLL: I will go along with it.

The CHAIRMAN: Then do I understand, Senator Croll, there is an amendment in the language which we settled on the other day but with the additional provisions cutting down the time of the notice of motion to five days, the return of the motion in five days, and no appeal from that decision. Is that right?

Senator CROLL: Yes, that is all right with me.

The LAW CLERK: Mr. Chairman, of course that would require spelling out section 126A with the changes in it.

The CHAIRMAN: Yes. It would involve incorporating section 126A of the Income Tax Act, and making those changes instead by reference. Are you satisfied with that?

Mr. DRIEDGER: The provisions with regard to time limits do not really make any difference to us.

The CHAIRMAN: That was your reaction in the first place.

Senator CROLL: Yes, that is what I understand.

The CHAIRMAN: I take it that you may as well see it in what you regard as its worst form and see how it works out, is that right, Mr. Driedger?

Mr. DRIEDGER: I suppose so.

The CHAIRMAN: Now, I have already read the new subparagraph (8). It simply incorporates by reference section 126A of the Income Tax Act to the Bankruptcy Act. Are you ready for the question, that this amendment be added as subparagraph (8) to this bill?

Some Hon. SENATORS: Question.

The CHAIRMAN: Those in favour? Contrary? Carried.

I think we have dealt with all items. Shall I report the bill with these amendments?

Hon. SENATORS: Carried.

The meeting adjourned.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 14

Complete Proceedings on Bill C-185,
intituled: "An Act to give effect to Term 29 of the Terms of Union
of Newfoundland with Canada"

WEDNESDAY, JUNE 1st, 1966

WITNESS:

Depatment of Transport: The Honourable J. W. Pickersgill, Minister.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Hugessen	Reid
Blois	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Queens-</i>
Choquette	Kinley	<i>Shelburne</i>)
Cook	Lang	Taylor
Crerar	Leonard	Thorvaldson
Croll	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Davis	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McKeen	White
Fergusson	McLean	Willis—(49)
Flynn	Molson	

Ex officio members: Brooks and Connolly (*Ottawa West*).

Quorum 9

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, May 26, 1966:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Baird, seconded by the Honourable Senator Blois, for second reading of the Bill C-185 intituled: "An Act to give effect to Term 29 of the Terms of Union of Newfoundland with Canada".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Baird moved, seconded by the Honourable Senator Blois, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

Wednesday, June 1st, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Baird, Beaubien (*Bedford*), Benidickson, Blois, Fergusson, Flynn, Gélinas, Gouin, Haig, Hugessen, Irvine, Kinley, Lang, Leonard, MacDonald (*Cape Breton*), Paterson, Pouliot, Taylor, Thorvaldson, Vaillancourt, Walker and Willis. (25)

In attendance: E. Russel Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Leonard it was RESOLVED to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-185.

Bill C-185, "An Act to give effect to Term 29 of the Terms of Union of Newfoundland with Canada", was read and examined.

The following witness was heard:

Department of Transport: The Honourable J.W. Pickersgill, Minister.

On Motion of the Honourable Senator Haig it was RESOLVED to report the said Bill without amendment.

At 12.20 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, June 1st, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill C-185, intituled: "An Act to give effect to Term 29 of the Terms of Union of Newfoundland with Canada", has in obedience to the order of reference of May 26th, 1966, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 1, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill C-185, to give effect to Term 29 of the Terms of Union of Newfoundland with Canada, met this day at 11.30 a.m., to give consideration to the bill.

Senator **SALTER A. HAYDEN** in the Chair.

The **CHAIRMAN**: We have a quorum. I call the meeting to order. We have for consideration this morning Bill C-185. In view of the debate and the importance of this bill, I think there should be a report by Hansard.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

Senator **POULIOT**: Mr. Chairman, now that we have Mr. Pickersgill with us, I would like him to enlighten me, because in virtue of the Terms of Union the province was given certain rights, I am very touchy about provincial rights and I presume Mr. Smallwood is also touchy about his own rights and privileges. You seem to have been overlooked in this matter, and the Government of Newfoundland appears to have been completely ignored in this bill, and I wonder what has been the dealing of the Government of Canada with Mr. Smallwood with regard to that \$8 million. I was afraid Mr. Smallwood would not accept it because perhaps he was displeased that the province had not the opportunity, according to the law and according to the legislation, to ask for the \$8 million.

Hon. J. W. Pickersgill, Minister of Transport: I think I could help honourable senators, but I apologize for coming here without having read the account of their deliberations because it may be I will be wasting the time of honourable senators in repeating some things that have already been brought out in the debates in your house. I would not object at all if any senator interrupted me and said, "You can skip that point, because it was covered already."

I think it is really quite important to realize the reason there was for having Term 29 in the Terms of Union, in the first place. It was felt at the time that the Terms of Union were negotiated that it was so difficult to appreciate what the quantum of the constitutional subsidy should be for the new province that this should not be determined at the time, as the Fathers of Confederation had attempted to do with the 80 cents ahead in the original act of 1867, and as had been provided when subsequent provinces came into Confederation, and as they had been revised upward in 1907. These Constitutional subsidies were provided under the British North America Act and its amendments. So this provision was put in Term 29 to provide for the appointment by the Government of Canada of a royal commission. This was agreed to in the Terms of Union by the negotiators for Newfoundland, one of whom was Mr. Smallwood

himself, of course. After a period of years during which transitional amounts would be paid, a royal commission was to be set up, and this royal commission was to recommend what the permanent arrangement should be; in other words, what the Constitutional statutory subsidy should be comparable to the statutory subsidy received under the British North America Acts by every other province. The royal commission was duly established by Mr. St. Laurent and his Government shortly before the 1957 election. It made its report a couple of years later when the Government that had had to do with the negotiations was out of office, and another government was in office.

The award made by the McNair Commission was not too well received by the Government of Newfoundland. In fact, Mr. Smallwood was very critical of it, saying that it was adequate. But, the position he took at that time was at the very least Newfoundland was entitled to was what the royal commission had recommended, and he thought that the Government of the day and Parliament should have been more generous by increasing it. The position taken by the Government of that day originally was that this award should not have the character of permanence, and it was originally provided for a very limited period indeed. Then, when the tax arrangements were amended for the five-year period beginning in 1962 and ending in 1967—that is, the present period—there was a provision inserted in that legislation by Mr. Fleming, the then Minister of Finance, providing that the McNair award be paid for those five years.

My leader, who was the Leader of the Opposition at that time, and I and indeed all the people who were then in Parliament and who are now in Parliament supporting the present Government, took the view that it was an entirely wrong and improper thing to do, namely, to pretend that this was simply a part of the ordinary tax arrangements made and revised from time to time, and not a part of the fundamental Terms of Union. We considered that to be utterly wrong, and that what was the right thing to do was what was obviously intended by Term 29, and what was intended in the bargain made at the time of union, which was that the gap left there should be filled by implementing the recommendation of the royal commission.

It is true that at the time the Terms of Union were being debated in the House of Commons Mr. St. Laurent said—I am paraphrasing, but I think my recollection of it is quite good—that the Government of the day would not be bound to accept the recommendation of the royal commission, because it could not possibly, under the Constitution, bind the Government. He did say, however, that the Government would almost inevitably have the moral obligation to accept the recommendation unless it was quite ridiculous.

Senator POULIOT: Then, Mr. Pickersgill, what was intended to be done? It was agreed upon in the Terms of Union. Mr. St. Laurent was the Prime Minister at that time, and you were his right hand. You probably had a hand in the deed too. But, the McNair Commission suggested another commission to the study the matter of the \$8 million.

Hon. Mr. PICKERSGILL: No, the McNair Commission recommended the \$8 million, just as was envisaged in the Terms of Union. The McNair Commission recommended that from the time when the transitional payments ended—that is, from that time forward—\$8 million per year should be paid thereafter.

Senator THORVALDSON: In perpetuity?

Hon. Mr. PICKERSGILL: They did not say “in perpetuity”, but “thereafter” without any qualification surely means each year thereafter.

It was not my intention to deal with this at this time, but let me tell you what I believe to be the parentage of this arrangement. I discovered this by a certain amount of research after the events, because, although I was familiar in

a general way with the negotiation of the Terms of Union, Term 29 was not discussed with me at that time. I had no more knowledge of it than honourable senators would have had at the particular time. It will be recalled that in 1927—and perhaps Senator Pouliot will remember this well because he was in public life at the time—Mr. Mackenzie King appointed what was called the Duncan Commission to consider the grievance of the Maritime provinces that they had not been fairly treated in Confederation. The Duncan Commission recommended that there should be payments made to Nova Scotia, New Brunswick and Prince Edward Island for a period of years, and that after this period a second royal commission should be appointed to decide, in the light of experience, what payments should be made permanent.

Senator POULIOT: That is what I have said—

Hon. Mr. PICKERSGILL: That has nothing to do with Newfoundland at all. That had to do with the Maritime provinces.

Senator POULIOT: All I want to know, Mr. Pickersgill, is whether Mr. Smallwood is agreeable to this or whether he has been informed about it. That is all I want to know.

Hon. Mr. PICKERSGILL: The simple answer to that is that Mr. Smallwood has been informed, and Mr. Smallwood is not only agreeable to it, but he sent the Prime Minister a most effusive telegram of congratulations, which he made public. He also sent me an effusive telegram, which is more than I deserve, saying that justice has now been done in the matter.

I should like to explain this matter to honourable senators because I understand, just as in our house, one or two senators seem to have misunderstood it. Senator Thorvaldson has brought up the question of “in perpetuity”—

Senator THORVALDSON: Mr. Chairman, may I just say to the minister that I was not being critical when I mentioned that.

Hon. Mr. PICKERSGILL: No, you have an inquiring mind.

Senator THORVALDSON: I simply asked if “thereafter” means “in perpetuity” because I recognize that “thereafter” is a very broad term.

The CHAIRMAN: “Thereafter” means, “until some change is made”.

Senator THORVALDSON: Yes, Mr. Chairman, but I think I made clear the fact that I was not criticizing.

Hon. Mr. PICKERSGILL: No, and I was not implying that the senator was criticizing. I was just trying to explain the parentage of this thing, as I understand it, and that there is a precedent in our constitutional arrangements for this very bill. When the White Commission—this is the commission that had been recommended by the Duncan Commission in 1927 when it said that after a period of years these matters should be revised and determined finally, and which was appointed by the Government of Mr. Bennett—made its report it recommended that Nova Scotia should thereafter receive \$1,300,000 per annum; that New Brunswick should receive \$900,000 per annum; and that Prince Edward Island should receive \$275,000 per annum. Those were quite substantial sums in 1934 and, indeed, during the thirties, in the light of the budgets of those days, but they were fixed in monetary terms with no escalation, just exactly as the original constitutional subsidies were and as this \$8 million is.

These payments were made thereafter, except that all the constitutional subsidies were suspended during the war. When Mr. Ilsley brought in the wartime tax arrangements whereby the provinces temporarily gave up their tax rights for the period of the war, they also gave up voluntarily the right to receive their statutory subsidies, and that included the White awards during the war. But an act was passed at that time with special reference to the Maritime Provinces additional subsidies, called the Maritime Provinces Additional Subsidies Act of 1942, which says, in the operative clause:

The following additional annual subsidies shall be paid half-yearly in advance:

To Nova Scotia	\$1,300,000
To New Brunswick	900,000
To Prince Edward Island	275,000

out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada and be a charge thereon: Provided the said subsidies shall not be payable to any such province while an agreement under the provision of *The Dominion Provincial Taxation Agreement Act, 1942*, remains in force with respect to such province.

Since that wartime arrangement disappeared, these new payments have automatically been made twice yearly ever since, and are still being made, it is interesting that this particular act was printed in this volume entitled *The British North America Act and Selected Statutes*. I suppose that when this document is revised, sir, if this bill becomes law, it will also be printed in this volume so that it will record the fact that although this Act will just be an act of the Parliament of Canada, and although we have not gone to Westminster, so, it is nonetheless a part of the Constitution.

Now, that was the position that was taken about the McNair award by certain persons—the Prime Minister and I perhaps being the most prominent of them—when we were in opposition. When we went to the country we said precisely that if we were returned to office we would introduce legislation of this character. We also said that we would introduce it in the form in which it appears here, because the Government of Newfoundland, the Premier himself, expressed the feeling that this was the right way to do it.

The Premier of Newfoundland is an optimist. He believes that Newfoundland one day will not be a have-not province, and there are some of us who share that optimism. Perhaps we are not quite so enthusiastic as the Premier of Newfoundland, because after all that would be superhuman, but we are pretty optimistic, and it may well be that the day will come when Newfoundland will be so rich that it will voluntarily want to forego this \$8 million. However, it is our feeling that unless and until that day comes this award is part of the Constitution—the Terms of Union, and that it should have the same sanctity as any other part of the Constitution.

Senator POULIOT: Mr. Chairman, I think we all agree that Newfoundland is a member of the Canadian family and that it should be treated accordingly. However, the requirements of the province should be expressed by the province herself, that is, by the government of the province, and although very good speeches are made by senators and members of the House of Commons from Newfoundland, not one of them has authority to speak on behalf of the province. The government of that province was the only one who was qualified to say what amount of money should be granted.

I wrote to Premier Smallwood about it, but no one replied. All I understand is that a telegram was sent from Premier Smallwood to yourself saying that he is satisfied with it. I believe that. He is a good friend of mine, as are Senator Cook and Senator Hollett.

I think it is most unfortunate to say anything against the union of Newfoundland with other provinces, because what we have in terms of memberships in the House of Commons and the Senate is an asset worth millions of dollars. I say that sincerely. Newfoundland is a great province and is of great benefit to us. What I wish to have is proof that the Government of Newfoundland through Mr. Smallwood has asked for this legislation.

Hon. Mr. PICKERSGILL: I could give volumes of proof of that. If the committee would like to have a copy of Mr. Smallwood's telegram to the Prime

Minister I would be delighted to get a copy and furnish it. I am a little too modest to suggest that I should furnish a copy of the telegram he sent to me.

SENATOR POULIOT: Do not be too modest. I am satisfied with what you have said. As a member of the cabinet you have authority to speak for Newfoundland. That is all.

Hon. Mr. PICKERSGILL: Thank you very much, Senator Pouliot. I think I can say on behalf of the genuine Newfoundlanders here, as well as on my own behalf, as one who has been elected six times in Newfoundland, I appreciate very much the kind words you expressed about us.

Senator POULIOT: It is only fair that I should do so. No senator or member of the House of Commons can fail to speak on behalf of Newfoundland.

Senator HOLLETT: Mr. Chairman, as you know, the Royal Commission used the word "thereafter" but it did not define the word. I take it that Bill C-185 definitely defines the word "thereafter" when it says:

and in each and every fiscal year thereafter unless and until otherwise provided by any agreement in that behalf hereafter entered into between the Government of Canada and the Government of Newfoundland,—

I suppose that this amount of \$8 million is in perpetuity.

Hon. Mr. PICKERSGILL: Personally I think it has exactly the same kind of effect as the Maritime Provinces Additional Subsidies Act, to which I adverted earlier.

The CHAIRMAN: Senator Leonard?

Senator LEONARD: Do these words "unless and until otherwise provided", etc. occur in the Maritimes legislation?

Hon. Mr. PICKERSGILL: No. I think in 1933 or 1934, or whenever the precise year was, we were not so optimistic in Canada as we now are, and nobody ever thought that a day would arise when the Maritime provinces would be rich enough not to need the money.

Senator LEONARD: Then may I ask if the words in clause 2 of the bill, which read "pay to the Province of Newfoundland in the fiscal year commencing on the 1st day of April, 1967, and in each and every fiscal year thereafter" are related purely to the question of the time of the agreement? In other words, can an agreement only modify the terms of the payment of \$8 million?

Hon. Mr. PICKERSGILL: I would hesitate to express an opinion on that point.

Senator LEONARD: Should it be made clear?

Hon. Mr. PICKERSGILL: If I may say so, with respect, because I am not a lawyer, although I did make a living once as a constitutional historian, it seems to me that no statute could find this or any future Parliament. Indeed, I would argue, as a constitutionalist, that technically this act, if we pass it could be repealed at the next session of Parliament. I also say that that would not be done, any more than the British Parliament, which could technically repeal the British North America Act of 1867, would dare to do it.

Senator LEONARD: My point is the opposite. Can the agreement change this statute without coming back to Parliament?

Hon. Mr. PICKERSGILL: Oh, no.

Senator LEONARD: But it can change the date — the time?

The CHAIRMAN: It could increase the amount.

Hon. Mr. PICKERSGILL: I would question, senator, whether it really could. I would question whether we would ever contemplate again making some special constitutional provision for Newfoundland related to the original Terms of Union. There might be, as in 1907, a revision of the statutory subsidies for all ten provinces. I would contemplate this act at the completion of confederation.

Senator LEONARD: Then the significance of these words dealing with an agreement relates only to the term of the payment.

Hon. Mr. PICKERSGILL: Yes, that is right.

Senator LEONARD: And not anything else?

Hon. Mr. PICKERSGILL: Not anything else.

The CHAIRMAN: I do not know about that.

Senator HOLLETT: I want to make it very clear to everyone here that if you look at the last line but two, clause 2, it says "by way of additional financial assistance as contemplated by Term 29".

Hon. Mr. PICKERSGILL: Yes, that is correct.

Senator HOLLETT: Might I read Term 29. It says:

... to recommend the form and scale of additional financial assistance, if any, that may be required by the Government of the Province of Newfoundland to enable it to continue public services at the levels and standards reached subsequent to the date of Union...

That would be 1957.

Hon. Mr. PICKERSGILL: That is right.

Senator HOLLETT: In other words, that is all that it is good for?

Hon. Mr. PICKERSGILL: Yes, that is right.

Senator HOLLETT: When it gets to that particular point, then this would be altered, of course, in terms of Term 29?

The CHAIRMAN: Mr. Pickersgill, I suggest that the parties can contract themselves out of this.

Hon. Mr. PICKERSGILL: That is right, certainly; but I do not think the parties could increase it, because the royal commission did not recommend any more. It is all related to Term 29, and once the royal commission has performed its function and once an act is passed pursuant to its work, I would think that was the only thing that could be done. That phrase could have been left out. But it was the pride of the Government of Newfoundland, it was their hope and expectation that perhaps the day would come when they would not need it or would not need as much. It was put in for that reason. Of course, as honourable senators know, it is purely declaratory.

Senator POULIOT: That is, if they do not need it—this is why I insisted upon getting the information as to why it should be given without any asking by Premier Smallwood or the department in Newfoundland.

Hon. Mr. PICKERSGILL: They need it now.

Senator THORVALDSON: Senator Leonard has dealt with the questions I had in mind in identically the way I would have asked them. Consequently I do not have to go over that ground again.

I queried this part of the agreement in the Senate, and without being critical of the bill I simply said that I believed there should be some explanation in committee in regard to just what those words meant, as to a future agreement.

Now, the honourable minister says that it is incomprehensible that Premier Smallwood or any Government of Newfoundland would sit down with the Government of Canada and ask for the amount to be escalated. Nevertheless, it might be quite possible that they would ask for the amount to be reduced. I must say that that seems to be an impossible position for me to accept.

I take the view, as I think Mr. Chairman does—I am not going to be dogmatic about it, but my view at the moment is this—that these two governments could sit down, in a few years, and Newfoundland could say, "Because of inflation or other reasons we want this agreement changed". And the Government might do that without any legislation at all.

Now, I was most interested in this, that the minister did suggest there was some doubt about the wording of this section, when it came to speak of any agreement to be made in the future. Mr. Chairman, I want to reiterate that this doubt is in my mind as to just what this agreement means in this regard.

Hon. Mr. PICKERSGILL: I wonder if I can perhaps say a word in clarification. I think Senator Hollett has put his finger on the point. This legislation is all dependent upon Term 29. Term 29 provides for only one royal commission and when that royal commission has made its recommendation, it is functus. It seems to me that any agreement which may be made would have to be within the ambit of what that royal commission have recommended.

The CHAIRMAN: But on the basis that Term 29 or any of these terms of union cannot be revised?

Hon. Mr. PICKERSGILL: Yes.

The CHAIRMAN: Now, you are not suggesting that they cannot be revised?

Hon. Mr. PICKERSGILL: I am suggesting that they cannot be revised. They cannot be revised just by the Parliament of Canada, because they are part of the British North America Act.

The CHAIRMAN: Yes.

Hon. Mr. PICKERSGILL: Therefore, Newfoundland in this respect would be in no different position from Manitoba or any other province. I am sure it would be physically possible for the Government of Manitoba and the Government of Canada to make an agreement to alter the statutory subsidies. But Parliament cannot carry that agreement out. We would have to go to Westminster, under our present Constitution and the British North America Act would have to be altered. Any agreement to increase this amount would equally have to go in that way. But what we are saying in this statute is that if Newfoundland voluntarily wants to give up some advantage or some part of the advantage in the terms of union, this is as I said purely declaratory—I do not think it has any strictly legal effect whatever.

Senator THORVALDSON: May I ask this question of the minister. The terms of reference to the McNair Report referred to this problem which was mentioned frequently in the Senate, namely, that there was to be some comparison. The McNair Commission was instructed to make a comparison in regard to Newfoundland, its standard of living and its standard of taxation, with the Atlantic provinces.

Hon. Mr. PICKERSGILL: The terms of reference were Term 29. They were not altered. They were just Term 29.

Senator THORVALDSON: It is certainly pretty well undisputed that the whole idea was to place Newfoundland in a position comparable to the other Atlantic provinces—

Senator HOLLETT: No, no.

Hon. Mr. PICKERSGILL: I think you have to read the exact words, Senator Thorvaldson.

Senator THORVALDSON: I have read the terms of reference very carefully, and the report of the McNair Commission. I certainly understood that it was all based upon placing Newfoundland in a comparable position in regard to tax levels and standards—

Senator HOLLETT: Tax levels, yes.

Senator THORVALDSON: —as the Atlantic provinces. Now, what is the position? I will agree with the view that the McNair report, when it says “hereafter”—

Hon. Mr. PICKERSGILL: “Thereafter”.

Senator THORVALDSON: "Thereafter" —means in perpetuity. But what will be the position if in, say, ten or fifteen years, Newfoundland finds it has a higher standard of living than, say, Ontario? What will be the position? Is there not a possibility that there could never be any revision of this situation?

Hon. Mr. PICKERSGILL: My argument would be that there is exactly the same possibility of revision of this as there is of the statutory subsidies of British Columbia, Alberta, Saskatchewan, Manitoba or Ontario—no less and no more. These things are provided for in the British North America Act and its amendments and they can be revised—as Sir Wilfrid Laurier's Government showed in 1907 when they were revised and the British Parliament passed a revising act, though British Columbia did not concur in it. All the other provinces did.

I say that from this point on, once this act is passed, Newfoundland will be, in my view, in no different position from any other province. Its statutory subsidies will be no more revisable, except downward.

Then what it really is comparable with is much more the award of the White Commission, which is made in an act of this Parliament but which we bind, as I say, with the British North America Acts, which we treat as part of the Constitution, and we expect this bill when passed to be treated as part of the Constitution.

The CHAIRMAN: I wonder if we are losing sight of the main purpose of this bill, which is to settle the amount of \$8 million, and that goes on thereafter. There may be a few extra words that have caused us some difficulty—"unless and until otherwise provided". In one sense they may be meaningless words, but they do not destroy the rest of the bill.

Senator FLYNN: With all due respect, Mr. Chairman, that is the point I want to discuss.

The CHAIRMAN: You have the floor at the moment, senator.

Senator FLYNN: First of all, we are all in agreement with the purpose of the bill. But there is a difference with some of the provisions of the British North America Act. The B.N.A. Act provides, for instance, for annual payments to the provinces in settlement of all claims against the federal Government. This bill wants to enforce Term 29 of the union with Newfoundland, but this Term 29 refers to a fluctuating situation, the idea being to provide for the Government of the Province of Newfoundland that it will continue "public services at the levels and standards reached subsequent to the date of union, without resorting to taxation more burdensome..."

This is a very fluctuating situation, whereas, as you say, a province gives up a certain right against an annual payment, and takes the chance that it may have less value eventually. The present clause says that we are going to pay \$8 million a year, each subsequent fiscal year. That merely amounts to the fact that we are going to pay \$8 million a year. Of course, Parliament, in this case, would be able to amend this act without the concurrence of the Government of Newfoundland. I agree with you there. But in adding the words "unless and until otherwise provided by any agreement between the Government of Canada and the Government of Newfoundland". I say that we in Parliament form a contractual obligation not to change this annual payment, whatever the circumstances may be, unless there is consent of both parties.

For instance, if, as has been mentioned, in ten years from now Newfoundland is the richest province in Canada and if it says it will not agree to any change being made, Parliament, because it has assumed a contractual obligation here, will not be able to change this act without the consent of the Newfoundland Government. Secondly, if this \$8 million which is not worth now what it was worth when the act was passed, should need to be adjusted and if the Government refuses to change it, then the Government of Newfoundland

will not be getting what it was intended it should get. I know what the Government has in mind, but I am not too sure it is achieving that.

Hon. Mr. PICKERSGILL: I would point out to Senator Flynn that that is why I keep coming back to the White awards and the Maritime Provinces Additional Subsidies Act. That act simply says Nova Scotia, New Brunswick and Prince Edward Island shall get fixed sums for an indefinite period. It is an act of the Parliament of Canada which could be repealed tomorrow, just as this one could be.

Senator FLYNN: Not this one. This one could not be repealed without the consent of Newfoundland. Without their consent Parliament could not change this.

Hon. Mr. PICKERSGILL: But Parliament cannot be bound. We cannot bind subsequent parliaments. It is a moral obligation but not a legal obligation.

Senator THORVALDSON: I submit it would be a matter of political immorality for any government to change this bill without the consent of Newfoundland.

Hon. Mr. PICKERSGILL: I agree.

Senator THORVALDSON: I submit further we should not legislate in this way. This is going to cause, in my opinion, an enormous amount of trouble in the future. It might cause a complete break between Newfoundland and the rest of Canada. You have this clause—

The CHAIRMAN: Let us analyse that statement you have made. If the situation in Newfoundland at some future date is not being met, and the burdens of carrying on government are not being met adequately by \$8 million and they need more money, it is always possible, as I see it, to have a constitutional amendment provided.

Hon. Mr. PICKERSGILL: Under the present system that would be taken care of by the system of tax-sharing and equalization. The Government of Newfoundland has taken the position, and Newfoundland's representatives in both Houses of Parliament have taken the position, that they want their constitutional rights settled by this bill, and for any additional needs they may have they are willing to take their chances like the other nine provinces. The only difference between this bill and the bill under the White awards is that under the White awards, there is no clause regarding agreement with the provinces. I think it would be still open to Parliament to abolish the White awards if the governments of Nova Scotia, New Brunswick and Prince Edward Island asked to have them taken away, but I think it would be quite immoral to do so otherwise.

Senator FLYNN: Let me put this question to the minister: Do you think the Government of Newfoundland would be agreeable to changing the words beginning with "unless" to "as long as economic factors remain the same."?

Hon. Mr. PICKERSGILL: Who would determine that?

Senator FLYNN: As I see it you determine it with the formula of authorization. I am not suggesting any definite term, but just an idea that this amount should be guaranteed in line with the economic needs considering the financial capacity of the Government of Newfoundland. That would be morally as reassuring and probably more equitable and we would know that Parliament could then change it. Otherwise I do not see how we can change it, as we are entitled to do, if one of the governments refuses to concur.

Hon. Mr. PICKERSGILL: That is the way we want it. Parliament could not change the Quebec subsidies even if Quebec did not need them.

Senator FLYNN: Which ones?

Hon. Mr. PICKERSGILL: The statutory subsidies under the British North America Act.

Senator FLYNN: That is not the same thing. Let us read section 118 of the act. That is in settlement of certain claims existing at the time by the provinces against the federal Government. This is something we don't know about. We don't know what the financial capacity of Newfoundland will be ten years from now. Again, do you contend that the \$8 million has the same value as the \$8 million we paid ten years ago?

The CHAIRMAN: We have generated much discussion on this agreement. It leads me to the conclusion that we are speculating as to what may occur in five or ten years from now. They speculated in Term 29 and made a provision for it, and I think the legislation is acceptable in the form in which it is presented to Newfoundland and to the House of Commons and apparently to the other provinces. I think we should give them what they are prepared to accept. The provinces have always been able to find a way in co-operation with the federal Government to get more money when they have demonstrated a need.

Senator THORVALDSON: I listened to the minister suggest that this bill should be deemed to be a part of the Constitution of Canada. I would quite agree that you can put it into any constitution and bind it with the other amendments to the Constitution, but I cannot accept—

The CHAIRMAN: Do you know what you would call that statement? It is what we call in a judgment when the judge goes beyond what is necessary for his findings in a case. It is *obiter dictum*.

Senator THORVALDSON: I cannot accept the view of the minister that this becomes part of the British North America Act.

Hon. Mr. PICKERSGILL: I said part of the Constitution of Canada.

The CHAIRMAN: Are you ready for the question?

Hon. SENATORS: Yes.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

Hon. Mr. PICKERSGILL: May I be allowed to thank honourable senators for the interest they have taken in this problem. I am sure the people of Newfoundland will be very happy with what the Senate has done today.

The committee adjourned.



First Session—Twenty-seventh Parliament

1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 15

Complete Proceedings on Bill C-151,
intituled: "An Act to provide for the establishment of a fund for
the economic and social development of special
rural development areas".

TUESDAY, JUNE 14, 1966

WITNESSES:

Department of Forestry: Rural Development Branch; W. R. August, Chief
Administrative Officer; L. E. Poetschke, Chief Economic Officer.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Reid
Burchill	Isnor	Roebuck
Choquette	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Lang	Thorvaldson
Croll	Leonard	Vaillancourt
Davis	Macdonald (<i>Cape Breton</i>)	Vien
Dessureault	Macdonald (<i>Brantford</i>)	Walker
Farris	McCutcheon	White
Fergusson	McKeen	Willis—(47)
Flynn	McLean	

Ex officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, June 8, 1966:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McDonald, seconded by the Honourable Senator Basha, for second reading of the Bill C-151, intituled: “An Act to provide for the establishment of a fund for the economic and social development of special rural development areas”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

After debate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Baird, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative”.

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, JUNE 14th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Benidickson, Blois, Connolly (*Ottawa West*), Davies, Fergusson, Flynn, Gershaw, Gouin, Haig, Hugessen, Irvine, Isnor, Kinley, Lang, Macdonald (*Cape Breton*), McCutcheon, Pearson and Pouliot. (24)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator McCutcheon it was Resolved to recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-151.

Bill C-151: "Fund for Rural Economic Development Act", was read and examined.

The following witnesses were heard: *Department of Forestry:* W. R. August, Chief Administrative Officer. L. E. Poetschke, Chief Economic Officer.

On Motion of the Honourable Senator McCutcheon it was Resolved to report the said Bill as amended, which amendment appears in the Report of the Committee which forms part of the proceedings of this day.

At 10.30 a.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, JUNE 14th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill C-151, intituled: "An Act to provide for the establishment of a fund for the economic and social development of special rural development areas", has in obedience to the order of reference of June 8th, 1966, examined the said Bill and now reports the same with the following amendment:

1. *Clause 10, line 13*: Immediately after "year", insert the following:
"and in any event not later than six months after such termination and, if Parliament is not then sitting, within 15 days after its commencement,".

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, June 14, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill C-151, to provide for the establishment of a fund for the economic and social development of special rural development areas, met this day at 9.30 a.m.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Honourable senators, it is now 9.30. We have a quorum, and I call the meeting to order. This morning we propose to consider Bill C-151. First, the usual motion is required with respect to the printing of the proceedings of the committee.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: We have with us as witnesses this morning Mr. W. R. August, Chief Administrative Officer of the Department of Forestry. With him is Mr. L. E. Poetschke, Chief Economic Officer. I will call on Mr. August to give a general explanation first.

W. R. August, Chief Administrative Officer, Department of Forestry: Mr. Chairman and honourable senators, ARDA was created in 1961 with the express purpose of assisting provinces through research as well as technical and financial aid in raising the standard of living of many Canadians in rural areas. This was to be done through resource adjustment, increased income opportunities and other development projects. The provinces have generally made good use of ARDA in progressing with a program of rural development, but it has become evident that there are problems of chronic under-employment and under-productivity in certain specific rural areas that need a different approach from the general order.

Widespread low income, poverty and undevelopment have become particularly deepseated in some rural areas and to attack these problems special comprehensive and coordinated development programs are required. It is for this purpose that the Fund for Rural Economic Development is proposed.

The bill before you will enable the federal Government to join with the province in bringing to bear on an area as a whole a total development program. The approach contemplated is:

First: The selection of rural areas which are subject to widespread low income and which have major adjustment problems but which have a recognized development potential.

Second: Once the area has been determined studies will be undertaken on the physical, economic and social structure to determine the problems and potentials.

Third: Then the people of the area will be involved in arriving at a development plan.

Fourth: This broad plan or strategy, once arrived at, will be implemented usually by means of a number of projects each of which fits into the overall plan. Existing programs will be coordinated with the overall plan. The federal and provincial government will enter into an agreement under which each will undertake certain elements of the plan.

Several comprehensive plans are now under intensive study. If these plans are to be carried out in their entirety special financing such as might be made available under this legislation will be required. The cost of the major adjustments proposed by these plans is beyond the financing normally available under ARDA and the range of projects likely to be proposed is broader than those possible under the current rural development agreements.

This legislation would provide a means of carrying out these plans, of taking a proper, complete look at them, of bringing to bear the total government programs on at least two levels of government and at the accelerated pace we believe necessary to raise the standard of living in a fairly quick time.

The CHAIRMAN: How does this plan you talk about get started? Does it spring automatically from somebody's head who then decides to do something about it?

Mr. AUGUST: There are a number of ways of having it started. Generally the province will approach the federal Government with a suggestion that there is a chronic area of low income or low productivity, or it may well be that a group of citizens' committees in an area will get together to ask that certain action be taken in that area.

The CHAIRMAN: What information did you have in order to decide that this bill was necessary?

Mr. AUGUST: There was very much evidence when we were operating under the ARDA legislation, and when we were dealing with the provinces we came to the conclusion that the ARDA agreements and programs going on under that agreement did not have a deep enough or sufficiently co-ordinated effect on some of the areas involved.

Senator BENIDICKSON: Could you give us some examples of the things that can be accomplished with this fund and that cannot be accomplished under the present ARDA legislation?

The CHAIRMAN: Could I suggest adding to that an illustration, say, of a situation where they were working under the ARDA legislation and then they found it did not go far enough?

Mr. L. E. Poetschke, Chief Economic Officer, Rural Development Branch, Department of Forestry: This Part 5 of the normal ARDA agreement gives us authority to provide assistance for various development type projects, to provide income and employment opportunities for people in these Part 5 areas which are defined as areas where a large proportion of the farmers have low capital investment, low income. That is how these areas are defined statistically. In parts of these areas where the situation is very severe, the piecemeal approach which comes by implementing one project here and another there really makes no fundamental change in the area.

Senator McCutcheon: What type of project do you have in mind?

Mr. POETSCHKE: For example, the community might like to have a small parking area which they feel would help to provide some income and employment opportunities. This is a very superficial attitude towards a basic problem which in many cases is a result of insufficient social capital investment in education, roads and communications. Opportunities for these people are very

limited and these small development projects do not make a fundamental change. What is required in these areas is a co-ordination of all the programs available federally and provincially, and also other projects that may be a little different from the normal programs to correct the situation.

The program probably furthest along is in northern New Brunswick, in Restigouche County. It was recognized when this area was studied that there was an immense backlog in expenditures on social capital, and so on. It was felt that one of the things that could break through the educational barriers was an additional television station, an ultra high frequency station that would bring in the best teachers of the province and make them accessible to the population there. There was no authority under the regular agreement to provide this sort of thing. There is also the fact that we have under the comprehensive plan the opportunity to get the province to sit down and develop an integrated program tying all the pieces together and providing for a situation where you can evaluate the impact of the expenditures in an area.

Senator PEARSON: In regard to basic cases, let us take the Interlake region in Manitoba. I would like to ask how many farmers are affected by this program there.

Mr. POETSCHKE: There are 6,000 farmers in the Interlake area; there are 17,000 families in the area, of which about 6,100 live on farms. Approximately 3,000 to 5,000 are farm fishermen on the lakes. Six thousand are urban service families or retired families, and about 2,000 or 3,000 have been classed as others.

Senator PEARSON: How many of these have volunteered to move out of this area? This program has been developed by the Government of Manitoba together with the federal Government?

Mr. POETSCHKE: There has been a substantial rate of migration from the farm going on in that area in the absence of any program at all. It is not sufficient to increase the productivity so that those who remain can make a living. They only move out under fairly severe pressure. They can be moved at a fairly substantial rate. The intention would be to make it easier for them to move and to make sure that all the resources of the manpower mobility program will be available to them. They do not move until provision can be made for housing, or if they are too old to fit into the manpower program to try to work out some other arrangements to make sure that they don't leave their land and get into a worse situation.

Senator PEARSON: Are they moving into local towns or into cities like Winnipeg?

Mr. POETSCHKE: They are doing both. I would say about half and half—half move into towns and half move into Winnipeg, but outside the perimeter. Some are moving out and taking other farms. Others are moving into other districts.

Senator PEARSON: Is there any set price per acre for these farms?

Mr. POETSCHKE: At the moment there is no set program. This is at present something which we are hoping to develop in negotiation with the province, that is to set up a land acquisition program to make it possible for these farmers to have a market for their land. Many of them have pieces of land that nobody wants to acquire. They want to get out but they cannot sell. Therefore, they have the choice to stay in and slug it out or to leave without assets. What we hope to be able to do is to provide a market for their land. At the same time care will be taken that they will be fitted into the manpower program or an adult education program.

Senator BENEDICKSON: With reference to this program being worked out, is it being worked out in contemplation of passing this bill, or is it just being worked out under ARDA?

Mr. POETSCHKE: It is not possible under ARDA.

Senator BENIDICKSON: This program could not be followed through?

Mr. AUGUST: There are elements of this program that could be undertaken under ARDA, but unless this bill was available the Province of Manitoba would have to carry much of it themselves.

Mr. POETSCHKE: Many of the specific items might be missing.

Senator FLYNN: Would it have been possible by an amendment to the ARDA legislation to include what is contemplated by this bill? Would it have been possible to include it by a simple amendment?

Mr. AUGUST: I don't think it could be a simple amendment. I am quite sure there could be an amendment but it would have a change in the whole momentum of the ARDA legislation.

Senator FLYNN: Is not this what could be considered as a comprehensive rural development program? The rest is the same. The scheme of the act seems to me to be the same as that provided under ARDA.

Mr. AUGUST: Under ARDA there are specific provincial allotments. Each province has established a certain amount of money under the ARDA agreement. Under this legislation the idea is to have a fund that can be directed at specific areas, without particular reference to the area.

Senator FLYNN: There is no apportionment between the specific provinces. There is no opting out formula either.

Mr. AUGUST: It could be so.

Senator FLYNN: Has this legislation, to your knowledge been approved by all provincial governments, before being introduced here?

Mr. POETSCHKE: They have approved the terms of the bill. They understand and they have approved the terms of the bill.

Senator McCUTCHEON: There is no formula for the provinces' contribution to any of these schemes. The federal Government may pay it all?

Mr. POETSCHKE: That is right, dependent on the priority of the programs and the needs of the area, and so on. The cost shares are negotiable under this fund expenditure, whereas under the ARDA agreement they are set by the agreement. Under this, cost shares are negotiable and we anticipate that the cost share of the federal Government will provide for the same programs in different areas. It may be in one area that recreation development, for example, might be a key means of improving the area. Under these conditions, presumably, we might consider a higher cost share than an area where it was just a marginal activity. So there is complete flexibility for negotiating cost shares.

Senator McCUTCHEON: How far is your plan advanced regarding the forestry educational station in New Brunswick?

Mr. POETSCHKE: It has certainly been approved and welcomed by the New Brunswick people.

The CHAIRMAN: It is operating?

Mr. POETSCHKE: No, it is not. We cannot go ahead undertaking any programs under the agreement until the agreement is signed. There is no constructional arrangement as yet, although we are working hard to try to arrange the ownership and see how it would be financed and handled.

Senator McCUTCHEON: Who would operate it the federal or the provincial government?

Mr. POETSCHKE: The federal Government will not. In the Department of Forestry our group do not have authority to own or operate something like this. The province cannot, as yet. They are not eligible for a licence under the present system, although I understand this is being considered. There is a

possibility that it would be contracted out to a competent firm in New Brunswick.

Senator McCUTCHEON: Yes, but the program?

Mr. POETSCHKE: The programing, the curriculum, will be entirely the responsibility of the New Brunswick Department of Education. It appears that the National Film Board will act as a consultant to help put across the material or help in the preparation of the program, but the material itself will be New Brunswick Department of Education curriculum.

Senator McCUTCHEON: The definition is very wide. Is it contemplated that you might finance industrial development in any of these areas?

Mr. POETSCHKE: We make a distinction between the commitment that we see embodied in the bill, which is to treat the serious rural problem situation—we make a distinction between programs developed in that context and the decisions made under different criteria under regional development, national policy in relation to regional development.

Decisions to allocate national resources to one particular region for development are based more on different criteria than the decisions to pay money under the ARDA agreement. We are not attempting to maximize the potential of an area, but we are concerned with developing integrated plans which will lift particularly the level of the rural population in that area, giving them an opportunity to lift their standard to the average of the province, or to something more satisfactory.

Senator McCUTCHEON: You may educate them, but you are not going to provide them with any jobs?

Mr. POETSCHKE: We explore each case as it becomes available. It could be that we provide most of our attention to rationalization of the resource space.

Senator McCUTCHEON: What do you mean by rationalization of the resource space?

Mr. POETSCHKE: I am sorry, it is a phrase that we throw around.

The CHAIRMAN: It is like "guidelines".

Senator McCUTCHEON: I would imagine so. I would like it spelled out.

Mr. POETSCHKE: We use the term in connection with agricultural programs to establish an agricultural unit which provides a reasonable level of income for its owner. This seems to be around the level of about \$5,000 gross sales.

Senator PEARSON: It would be largely in regard to stock breeding rather than grain growing?

Mr. POETSCHKE: That is right. There might be a case of change of type of farm or the management. The unit may be satisfactory and it is a question of improving or helping to improve management so that the owner will get the best out of the resources.

The CHAIRMAN: They still have to find their own jobs?

Mr. POETSCHKE: This is largely true, although by improving the productivity of the resource sector, by investing in recreation, where the potential traffic seems to warrant it, generally improving the educational level in the area, we expect that some jobs will be created.

Senator DAVIES: When do you think an income is below a certain standard? Have you got a certain standard income for them?

Mr. AUGUST: Under this approach we would not specifically select people with, say, under \$3,000 annual income. The approach would be on the area as a whole and we would hope to develop it by rationalization of the resource space and by educating the people.

Senator DAVIES: How are you going to select the areas?

Mr. AUGUST: The area has been selected because there is a large group in the area with an income less than a certain base or gross sales and farming sales less than a certain amount. In other words we have specifically determined areas where this poverty exists in large proportion.

Senator PEARSON: My understanding is that this bill is roughly to make a massive attack on three specific areas. That is, in the Gaspé area of Quebec, in northern New Brunswick and at the Lakehead.

Mr. POETSCHKE: No, it is broader than that, sir. There are a number of other areas coming forward. At the moment these three are the areas for consideration. There is a possibility of one or two areas in Alberta, where there is a serious problem, particularly in the west of the province and in the northeastern part.

Senator BAIRD: What about Newfoundland? We have a problem there.

Mr. POETSCHKE: Yes. There is a proposal now to get up a study committee to examine—I am not just sure of the area—one large area in Newfoundland with the idea of taking advantage of this legislation.

Mr. AUGUST: There are also development plans proposed for Prince Edward Island and Nova Scotia.

Senator KINLEY: Do proposals come from provincial governments?

Mr. AUGUST: By and large, yes.

Senator KINLEY: Is that the case where you have selected the plans now?

Mr. AUGUST: Yes. The northern New Brunswick area was defined jointly. They asked for something in that area and we sat down together with them and defined the boundaries of the area for the purpose of the scheme.

Senator GOUIN: I would like to know something about education. Is it just general education or is it specialized education?

Mr. POETSCHKE: In most of these areas the problem is that the whole educational structure is inadequate. The social capital investments in the area have been lagging behind over the years. It is cumulatively worse for those who are behind. It is the whole range, right from primary school to high school and vocational training, trade school, adult education. It is the whole range of programs in the educational area that are really the key to the development or the key to assistance in most of these areas. Within this framework we are able to help people get in a position to take advantage of the educational facilities. The province will be improving its basic education facilities; and the federal Government and the province, under the technical education assistance program, will be assisting on the technical and vocational training side and the adult education side—the whole range.

Senator GOUIN: I suppose there is a difference between education for those who are able to stay in the region and those who emigrate.

Mr. POETSCHKE: Well, it is a question of once they get through the school system, which would be the same whether they stay or not, once they get into the technical vocational training system what they do there will depend partly on their aptitudes and interests, and whether they stay or whether they remain within that particular community, or other areas within the rural development area or the province, will depend on what they have done or what work is available for them.

Senator GOUIN: In Quebec, in the Gaspé Peninsula, it would be where you have a definite plan.

Mr. POETSCHKE: In northern New Brunswick, with the developments in the mine-mineral complex, the improvements in the forestry industry, possible re-organization of the inshore fishery and some movement from the inshore fishery to the offshore fisheries, and so on, there is sufficient development going

on to provide jobs for virtually all the people there. However, at the present time most of them are not qualified to take these jobs. They require assistance and training, and the whole objective of the northern New Brunswick plan is to make it possible for people in the area to take part in the developments that are going on in that area.

The strategy we have been discussing with the province, and looking at the labour force plans, and so on, the indications are a program can be worked out there which would take care of the people within the area; and there will be sufficient jobs becoming available for them if they are qualified and if they can escape. At the moment many are trapped on the land, back in the woods. They have no market for their property, so they are stuck there. If they wish to participate in the developments going on at Bathurst, for instance, we propose they will be able to sell their land and get assistance in moving and settling through the manpower program, adult education program and trade training, to enable them to qualify for the jobs becoming available in the area.

Senator GOUIN: Take the neighbouring region of Quebec, is the situation the same?

Mr. POETSCHKE: I have to confess I am not too familiar with it. As you realize, the B.A.Q. have worked up a plan for the people, and we have not, to date, been much involved in the planning or suggestions.

Senator GOUIN: But something is being done?

Mr. POETSCHKE: Something very definitely is being done.

Senator PEARSON: What happens to the land in that area of northern New Brunswick after these fellows move off?

Mr. POETSCHKE: Some of it will be held in conservation reserve. Where it is warranted on economic grounds, parts will be used for forestry development. An attempt would be made to use the land for its best possible use. The exact details have not been worked out yet. The main priority there is the people and not the land.

Senator POULIOT: Mr. Chairman, I wonder if the witness would be able to give us a tabulation showing the rural population and the urban population at four different periods: the first one, in 1914 before the First Great War; the second one in 1920 after the Armistice; the third one in 1939, on the eve of the Second Great War; and the fourth one in 1945, at the end of the Second World War. Is it possible for you to supply that information?

The CHAIRMAN: You can supply it?

Mr. POETSCHKE: Yes.

The CHAIRMAN: It is not available here this morning, but it can be supplied.

Senator POULIOT: It can be supplied when? Will it take long to have it done? You could get it from the Canada Year Book.

Mr. AUGUST: Yes, and the Bureau of Statistics.

Senator POULIOT: I would like to have that information to show that war has uprooted the farmers from the farms. You see my point?

Mr. POETSCHKE: Yes.

Senator POULIOT: It will not be a lengthy dissertation; it will be just figures.

The CHAIRMAN: We will get it for you, senator, and quickly.

Senator POULIOT: Thank you. Well, sir, do you not think the security of the farmer and security on the farm is essential for farming purposes?

Mr. POETSCHKE: Essential for what, senator? I am sorry, but I did not hear you.

Senator POULIOT: I may say clearly, and I will ask you the question this way: Is it not necessary for the farmers to be left alone or undisturbed on the farm in order to succeed?

Mr. POETSCHKE: I would say it is not the nation's, the Government's or the public's place to dispossess the farmer, to say, "You must leave the land." But, on the other hand, I think there are many farmers, from my own experience in western Canada—I am not too familiar with eastern Canada—who feel they are trapped on the land. They have gone in and they are not on good soil; their farm is too small and their capital resources inadequate. They have no prospects for the development of the farm to provide themselves with a satisfactory level of income, and they want to get out, but they cannot. My own feeling is it is a good policy to be able to help them get out if they want to. We see this being done partly by providing a market for the land, if they choose to sell it, and by providing assistance for them to get into another stream, to get the education they require to do a particular job. In other words, do not just let them go, but provide them with the assistance they need to get re-established. I do not think this is disturbing them; it is providing them with something many people want.

Senator POULIOT: Are those difficulties due, in the first place, to the fact the division between farm land and non-farm land—that is, lands that are not suitable for farming purposes—has not been made in the first place?

Mr. POETSCHKE: This is true.

Senator POULIOT: A long time ago?

Mr. POETSCHKE: That is right.

Senator POULIOT: And without placing the responsibility on this Government or the provincial Government, the fact is that farmers were given lands that were not good farming land?

Mr. POETSCHKE: This is partly true, but in addition, 20, 30, 40 years ago a man would make a satisfactory living off the land whereas he cannot make it now off the same land.

Senator DAVIES: Why?

Mr. POETSCHKE: Because of the development of technology, the use of machinery, and so on. Where you were working with more primitive equipment you could make a living from less satisfactory land. Where you are using high-powered and high-valued machinery, where a high level of production per unit of land is important, it becomes important that you have good land, and, as a result, over the years land that was formerly capable of sustaining a farmer is no longer capable of doing so, simply because changes in technology have made that land unsuitable.

Senator POULIOT: Leaving technology aside for the moment, is it not true that in the first place farmers could live by themselves on lots without any subsidy when the tree crop has not been cut from the lot? What I mean is that in the first place farmers were given arable lands or farming lands with trees on them, and afterwards there was a policy to give the first option to the lumbermen who cut the trees, leaving the small trees on the land, and these were not sufficient to permit the farmer to carry on his work as a farmer. This may not have happened in the west, but it was well known in the east.

Mr. POETSCHKE: As I say, I am from the west and I am not that familiar with the history of the east.

Senator POULIOT: I should like a man from the east to answer that question, because it is a matter of importance. In my province the lumbermen had the first go, and the farmers were left with nothing. Is it within your knowledge that some apostles of colonization put the farmers on the rocks on

the sides of mountains, and on land without soil of good quality? You do not know about that?

Mr. POETSCHKE: Well, I would not—

Senator FLYNN: Everybody knows that.

The CHAIRMAN: It is a matter of general knowledge.

Senator POULIOT: It is very important.

Mr. POETSCHKE: Just now, regardless of the reason—whether it was because of bad colonization or because of technology—we would like to do something to help these people, and that is what this bill is designed to do.

Senator POULIOT: I do not believe in technology. I believe in simple things. I do not believe that technology can help the farmer as much as can providing him with a good, normal living. Do you know that there are many investigators of ARDA who could not get an answer from anybody? It was very sad, but the people seemed to be indifferent about it. There was no answer. One was going to a funeral the morning after, and another one was hunting, and those who were marked down to give information would not give it on account of that. Besides that, do you not think that there are many ways of helping the farmer? For instance, he could be provided with second-hand clothes from the Department of National Defence. At the present time the farmers cannot have them. They are given to the Indians, and they are sold by the pound. You do not know anything about that?

Senator FLYNN: Mr. Chairman, I have just one question. I am not convinced that this fund could not have been integrated with ARDA. I am wondering if the witnesses can give me the reason or reasons for establishing something separate from ARDA.

Mr. POETSCHKE: Well, I think it was felt that the idea—the approach was quite different in a number of respects. It was different in that it was an integrated approach rather than an item-by-item approach. It was an integrated approach to a specific area, and a specific set of problems. The ARDA agreement applies generally right across the country to all types of situations that come within the agreement.

That is one thing. The second thing is that we did not want to tie the funds down. We did not want to allocate ahead of time where these funds would be spent, because it depends upon which province and which area, and which people in which area, are prepared to sit down in order to try to work out a plan for the area. We did not know what the timing would be, and some provinces and some areas have a much greater need than others.

The concept, really, in the rural development agreement is that we have an objective, and the question of how we accomplish it in the cheapest manner possible. We did not know what it was going to cost without having studied it by areas—this area relative to this area. It may be that in one area a problem can be met by putting in a road, whereas in another a huge investment will be needed for education and that sort of thing.

The CHAIRMAN: I think that is going parallel to the question. The question is simply as to whether you could have combined what is in this bill with the ARDA program. I suppose, as a matter of fact, you could.

Mr. POETSCHKE: Yes, that is right.

Senator ISNOR: Mr. Chairman, are we going to deal with the bill clause by clause?

The CHAIRMAN: I had not intended dealing with it clause by clause. There is a principle running right through this bill.

Senator McCUTCHEON: I am wondering how these people in northern New Brunswick are going to be supplied with television receivers capable of receiving ultra high frequency programs.

Mr. POETSCHKE: The idea is to place them in schools and community centres, not in homes.

Senator BENEDICKSON: Mr. Chairman, if you are not going to deal with the bill clause by clause I will say that on reading it I was a bit disturbed by the fact that the fund is to be extended over as short a period as four years and part of that time has expired. As this involves some programming the practical results flowing from this bill will be over in a very short time indeed. But, clause 10 provides that the minister shall, as soon as possible, submit a report to Parliament. It seems to me that this is very open-ended, and rather undesirable, with respect to expenditures that are made over such a short term. In other words, someone might decide it is not possible for a couple of years to make a report. It seems to me that there should be something firmer about the matter of reporting on a fund which is in effect over such a short period of time.

The CHAIRMAN: Of course, in that context, the report is in respect of the operations, and I would read that as including more than the financial aspects. I think the report would be in respect of the nature of the plans, and all the work that was done.

Senator BENEDICKSON: I do not think "as soon as possible" is adequate. We should say "within six months after the termination of each fiscal year," or something like that. "As soon as possible" could mean 18 months after the end of the fiscal year.

Senator McCUTCHEON: May I refer to clause 4(2), Mr. Chairman. I take it that that means the programs have got to be developed, and agreements signed with the provinces, by March 31, 1970, but the moneys might nevertheless be spent in the future.

Mr. AUGUST: That is correct.

The CHAIRMAN: It provides simply that no agreement shall be entered into after March 31, 1970.

Senator McCUTCHEON: All the planning has to reach the stage of an agreement between the federal government and the province by that time?

The CHAIRMAN: By March 31, 1970, that is right, so the period of actual use of the money conceivably could run way beyond 1970, depending upon the extent of the agreement.

Senator McCUTCHEON: That is the point I was trying to make.

The CHAIRMAN: Are there any other question? Shall I report the bill without amendment?

Senator BENEDICKSON: Mr. Chairman, is it not possible for us to be more specific as to the time of the submission of the report after the end of the fiscal year?

Senator McCUTCHEON: I agree with Senator Benidickson. I think the term he suggested is too long, but if he is satisfied with six months—

Senator POULIOT: The farmers cannot wait. If they are to be helped they are to be helped right away.

Senator BENEDICKSON: Could we not get a report after the end of the fiscal year?

The CHAIRMAN: If you leave in the term "as soon as possible" and add the words "in any event, not later than"—

Senator BENEDICKSON: That would be better.

Senator POULIOT: By the way, Mr. Chairman, when will I have an answer to my question?

The CHAIRMAN: Senator, we think we can get it today; if not, you will have it tomorrow.

Senator POULIOT: If the bill is to be reported today then I need it today, and not tomorrow. It does not take long. If those people know how to work it will take them only five minutes.

The CHAIRMAN: Do not pick on me, senator. I am trying to help you.

Senator POULIOT: I know the answer, but I am not—

The CHAIRMAN: We will get it for you as quickly as possible.

Senator POULIOT: Mr. Chairman, you can do better than that.

The CHAIRMAN: Wait and see the performance.

Senator POULIOT: Tomorrow is too late. Thank you just the same.

The CHAIRMAN: Have you a suggestion, Mr. Hopkins?

E. Russell Hopkins, Law Clerk and Parliamentary Counsel: I was just thinking, Mr. Chairman, that Parliament might not be in session at that time, or during any time—

The CHAIRMAN: Relate it to the fiscal period. It could be submitted as soon as possible, but within so many days after the termination of the fiscal year. It could be submitted within 90 days or 120 days after the end of the fiscal year.

Senator BENIDICKSON: I do not object to six months, but I think it is too open-ended as it is now.

Mr. HOPKINS: Have the officials any comment?

Mr. AUGUST: I think six months would be better.

The CHAIRMAN: The suggestion is that this section read:

The minister shall, as soon as possible after the termination of each fiscal year, but in any event not later than six months after such termination. . .

Senator MCCUTCHEON: Yes, and if Parliament is not sitting at that time, then 15 days after—

Senator ASELTINE: Leave it the way it is, Mr. Chairman. It would have to be done within a year, anyway. What is wrong with that?

The CHAIRMAN: What would have to be done within a year? It would have to be done just as soon as possible.

Senator BENIDICKSON: Mr. Chairman, I recall in a certain department with which I was familiar that it was open-ended and that reports came in two years after the year in which it was reported. They were valueless at the time they arrived. They would be all the more valueless with respect to legislation that is valid for such a short period.

The CHAIRMAN: I will ask the Law Clerk to read the change as suggested, and see if you agree.

The LAW CLERK: The section with the amendment would read:

The minister shall, as soon as possible, after the termination of each fiscal year, and in any event not later than six months after such termination, submit a report.

Senator MCCUTCHEON: Do you want to make a provision in the event that Parliament is not sitting?

The CHAIRMAN: If Parliament is not in session, within 15 days after.

The LAW CLERK: Yes, I think that should be added.

Senator POULIOT: I take it, Mr. Chairman, that there are supposed to be 20 persons to compose the board?

The CHAIRMAN: Section 7 says the advisory board shall consist of not more than 10.

Senator POULIOT: I have a good man to suggest as chairman of that organization. It is Mr. Hurry Jays, who told me he would accept it on a non-remunerative basis.

Senator BENNETTSON: The bill specifies that they shall all be civil servants.

The CHAIRMAN: Yes. Will you read section 10, as amended, Mr. Law Clerk?

The LAW CLERK: Section 10 as amended will read as follows:

The minister shall, as soon as possible after the termination of each fiscal year, and in any event not later than six months after such termination, and if Parliament has not been sitting within 15 days of its Commencement, submit a report to Parliament.

The CHAIRMAN: Agreed? Shall I report the bill with the amendment?

Senator McCUTCHEON: I have a question first, Mr. Chairman. Section 7 provides that the advisory board shall consist of not more than 10 senior officials, and clause 8 sets out their responsibilities. Can they recommend to the minister or suggest negatively to him under subsection (2) of section 8? I take it the minister is not bound by that?

Mr. POETSCHKE: No, he is not bound, but he would certainly take it into consideration.

Senator McCUTCHEON: What is the purpose of adding the advisory board? I think I know, but I would like to hear from you.

Mr. AUGUST: The advisory board was put in the bill to make sure that all Government departments having any development aspects in the areas that are being considered are involved in the plan, know about the plans and all activities can be properly coordinated.

Senator McCUTCHEON: They would be represented, for example, by the Department of Manpower and Employment?

Mr. AUGUST: Of course, they are on a high senior level.

The CHAIRMAN: Shall I report the bill with the amendment?

Hon. SENATORS: Carried.

Senator POULIOT: Thank you, sir, do not forget me!

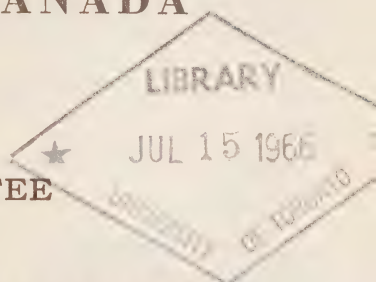
The committee concluded its consideration of the bill.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON



BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 16

Complete Proceedings on Bill C-178,

intituled: "An Act respecting the organization of the Government of
Canada and matters related or incidental thereto".

TUESDAY, JUNE 14, 1966

WITNESS:

Department of National Revenue: Hon. E. J. Benson, Minister.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Reid
Burchill	Isnor	Roebuck
Choquette	Kinley	Smith (<i>Queens-</i>
Cook	Lang	<i>Shelburne</i>)
Croll	Leonard	Thorvaldson
Davis	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Dessureault	Macdonald (<i>Brantford</i>)	Vien
Farris	McCutcheon	Walker
Fergusson	McKeen	White
Flynn	McLean	Willis—(47)

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, June 9, 1966:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Beaubien (*Provencher*), for the second reading of the Bill C-178, intituled: "An Act respecting the organization of the Government of Canada and matters related and incidental thereto".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Beaubien (*Provencher*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, June 14th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Benidickson, Blois, Connolly (*Ottawa West*), Davies, Fergusson, Flynn, Gershaw, Gouin, Haig, Hugessen, Irvine, Isnor, Kinley, Lang, Macdonald (*Cape Breton*), McCutcheon, Pearson and Pouliot. (24)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-178, "An Act respecting the organization of the Government of Canada and matters related or incidental thereto" was read and examined.

On Motion of the Honourable Senator Flynn it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-178.

The following witness was heard: *Department of National Revenue*: The Honourable E. J. Benson, Minister.

On motion of the Honourable Senator Beaubien (*Bedford*) it was Resolved to report the said Bill without amendment.

At 11.30 a. m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, June 14th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill C-178, intituled: "An Act respecting the organization of the Government of Canada and matters related or incidental thereto". has in obedience to the order of reference of June 9th, 1966, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, June 14, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill C-178, respecting the organization of the government of Canada and matters related or incidental thereto, met this day at 10.30 a.m.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Senators, we have bill C-178 before us. May I have a motion to report the usual number of copies of the committee's proceedings in English and French.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: We have with us, in connection with this bill, the Honourable E. J. Benson, Minister of National Revenue, and Dr. G. F. Davidson, Secretary of the Treasury Board. Mr. Minister, would you care to address yourself to the scope and purpose of this bill.

Honourable E. J. Benson, Minister of National Revenue: Mr. Chairman and honourable senators, I have not a prepared statement as such. The general purpose of the bill is to carry out certain reorganization of the Government, as was indicated by the Prime Minister last fall.

I have read some of the Senate speeches on the bill, and I think the basic purpose, as described in Senate *Hansard*, is to establish several new ministries. I might say that it takes a couple of cabinet positions in the Government, which were previously relatively light positions, such as that of the solicitor General, and the President of the Privy Council, and gives to them additional responsibility for work within the Government.

It is really part of a plan of reorganization of the Government that has been going on since Glassco made his report. Many things have been going on in reorganization of the Government that people have not been aware of. For instance, within the various departments the Government has been carrying out surveys of administrative practices. Administrative practices within the Treasury Board have been changing. The emphasis in government has necessarily been changing, over the years and I believe that this bill tends to recognize some of the changes in responsibilities of government and tries to combine similar functions in the areas where they can be more reasonably dealt with and also perhaps better dealt with. By doing certain things that are done by the bill, the responsibilities of certain ministers will be lessened so that they can concentrate more on the particular tasks that they have.

Perhaps in the past some tasks have not received the consideration they should have received. Henceforth some areas of government activity will be able to receive the attention of specific ministers, and I would hope that under

the reorganization a good deal of work can be carried out in these areas which perhaps under the old organization was not carried out as well as it could have been.

I think the whole bill is a recognition of the fact that government has changed and the organization of the ministry needed to be changed as well to bring it up to what the Government is expected to do in the last half of the twentieth century rather than the last half of the nineteenth century.

I would hope to discuss further individual parts of the bill to the best of my knowledge, and of course I have Dr. Davidson with me who is very familiar with the legislation. Perhaps this is the best way to deal with it.

Senator POULIOT: Mr. Benson, who drafted this bill?

Hon. Mr. BENSON: The bill was drafted by the Government draftsmen in consultation with the Secretary of the Treasury Board and two or three other deputy ministers who, of course, were in contact with the cabinet to carry out their decisions with regard to particular matters.

Senator BENEDICKSON: I take it that the Secretary of the Treasury Board has been the official made responsible for coordinating the institution of recommendations of the Glassco Report?

Hon. Mr. BENSON: Yes. The function of the Treasury Board has been changing, in fact has changed, with regard to the organization of it. Its function has been changing so that it is the central coordinating body responsible for the government organization, and I think this is directly a result of what was recommended by the Glassco Commission. The parts of this bill dealing with the Treasury Board carry out verbatim—except in one regard, that there is not a separate minister—the recommendations of the Glassco Commission.

Senator BENEDICKSON: Speaking specifically of the Glassco Commission, the Government has charged the Treasury Board with the responsibility of co-ordinating programs in implementation of them?

Hon. Mr. BENSON: Yes, they have charged the Treasury Board with this.

Senator POULIOT: Does the Government consider the word of Glassco as gospel, or with a grain of salt?

Hon. Mr. BENSON: No, we do not consider it as the gospel, of course, but we have carried out many recommendations of the Glassco Report because they made sense. In the case of other recommendations, which also made sense, when we tried to carry them through, difficulties arose, which meant that conditions had changed from the time the report was made. Therefore, certain recommendations have not yet been adopted.

Senator POULIOT: You spoke of the Government's draftsmen who wrote the bill. Who are they?

Hon. Mr. BENSON: The Department of Justice. It is the Department of Justice which approved it.

Senator POULIOT: That is enough for me.

Senator McCUTCHEON: I agree with the references to the Treasury Board. The legislation respecting the Treasury Board in the bill carries out almost completely the recommendations of the Glassco Commission. As the minister said, the exception is that the President of the Treasury Board is apparently not going to be a minister without other departmental responsibility?

Hon. Mr. BENSON: This the condition at present, in that the Prime Minister has indicated that I would be President of the Treasury Board as well as Minister of National Revenue. However, the bill itself provides for separate ministers—a separate minister of National Revenue and a separate president of the Treasury Board, if the Prime Minister so desires.

Senator McCUTCHEON: It is not proposed to do that immediately?

Hon. Mr. BENSON: Simply because the Prime Minister has indicated that I would have joint responsibility in the immediate future.

Senator McCUTCHEON: You might not want to answer this question, as to the change. If the President of the Treasury Board is not to be under a minister who has no other departmental responsibility and therefore cannot give his full time to, say, management of Government, why should it be moved from the Minister of Finance?

Hon. Mr. BENSON: In the first place, Glassco recommended this. More important, the Minister of Finance, of course, as you are well aware, Senator McCutcheon, is much more burdened than is the Minister of National Revenue. All I have to do is collect money from people like you.

The CHAIRMAN: And the people just rush and present it to you.

Senator McCUTCHEON: You would more or less agree with me that we might do away with the Minister of National Revenue?

Hon. Mr. BENSON: I do not believe that you can do away with his function.

The CHAIRMAN: I think that is what the senator was aiming at.

Senator POULIOT: I have to mention this, in view of the very strange things which have been done with regard to capital punishment. In the first place, last summer there was an order in council passed to the effect that there would be no hangings until further notice. Afterwards, the matter was submitted to Parliament and the majority for capital punishment was clear. Then there were commutations of sentences.

What I find unfair to the Solicitor General is that the Minister of Justice, who is there and who has always been there to read the evidence in matters of capital punishment, left it on the lap of the Solicitor General, who had to take it like this and was very much embarrassed. I find that the Government was not fair to the Solicitor General in that case, and the Minister of Justice should have kept his own responsibility.

Hon. Mr. BENSON: Mr. Chairman, I do not think that this really is absolutely pertinent to this bill; but I would simply like to point out that there never was an order in council passed, to my knowledge, saying that there would be no more capital punishment.

Senator POULIOT: I find mention of commutations of sentences in the bill, and I can take each one that was made and ask questions about it but I do not want to do that because I do not want to embarrass you. But the bill has been badly drafted.

Senator FLYNN: Why do you not want to embarrass the minister?

Senator POULIOT: I do not want to embarrass him, I want to protect the minister.

The CHAIRMAN: The minister has a statement to make.

Hon. Mr. BENSON: Perhaps I should point out that over the years, as those senators who have been members of the cabinet will know, the Solicitor General in the cabinet has been the person who traditionally has had responsibility for considering capital cases.

Senator POULIOT: Not for the death penalty. It was the Minister of Justice who was doing that. May I refer you to a book which has been published by a member of the Press Gallery, Mr. Ray Brown. It is entitled *From Where I Sat*. In that book Mr. Brown recalls that he went to see the late Mr. Ernest Lapointe in the East Block and there were three women with him. He asked one of the secretaries what they were there for, and the reply was, "They are the wives of three men who have been sentenced to be hanged tomorrow." The first one entered the office of the minister and came out at once. The second did likewise. The third one was not returning. Then a bell rang and everybody went into the minister's office and found the woman flat on the floor unconscious—because the

minister had told her he would not change his decision regarding the hanging of her husband. He assumed this responsibility. I knew him very well, better than anyone else. He used to tell me that when he had a case like that he did not sleep for two or three weeks. I know this is difficult, but it is part of his responsibility. My conviction is that the Minister of Justice was afraid to accept responsibility and this is why he has put the matter on the lap of the Solicitor General. That is what I have to say about it.

Senator FLYNN: I think the minister would like to correct something. If I read correctly, there is a statement to the effect that this bill adds to the responsibility of the President of the Privy Council, a person who now has his own responsibility. The position will be that the responsibility will be added to the Registrar General?

Hon. Mr. BENSON: Of course, these can be handled separately. The Prime Minister has indicated that that will be so.

Senator FLYNN: The President has no responsibility, except to preside at meetings of the Privy Council when the Prime Minister is absent.

Hon. Mr. BENSON: The Prime Minister has established that the President of the Privy Council will also be the Registrar General. The Prime Minister has arranged that the President of the Privy Council will presently take on this added responsibility.

Senator FLYNN: As regards dividing the Department of Justice into three, from an administrative load viewpoint would you not agree that it would have been better to split the Department of Transport?

Hon. Mr. BENSON: I am not so sure of this. If you look at the Glassco Report, you find he did talk about the Department of Transport and its heavy responsibilities but he never got around to the point of saying it should be split.

Of course, each one has his own views as to what departments should be split and who the ministers should be and how things should be organized within government. All that any government can do is put forward its best opinion as to what should be done at a particular time.

Perhaps in some people's opinion the Department of Transport should be split. However, it was the judgment of the Government at this particular moment that it was not appropriate to split the Department of Transport.

Senator FLYNN: The reason given in the Glassco Report for not splitting the Department of Transport was the problem of establishing uniform policy in matters of transport. Would you not say that this argument would apply, *mutatis mutandis*, to the Department of Justice?

Hon. Mr. BENSON: I think that the things done by this bill with respect to the Department of Justice were fairly reasonable in the circumstances. You now have the Solicitor General, who will take over the responsibility for custody of prisoners and for the R.C.M.P., that is, the detection of crime, and the custody provisions, and the parole of prisoners, the handling of prisoners generally.

This seems to me to be quite a different function from the Department of Justice as such, where their job is to carry out prosecutions and other court work, and to carry out the tremendous task of co-ordinating legal services within the Government. One of the things you will note, if you think back to the Glassco Report was that legal services should all fall within the Department of Justice.

Senator McCUTCHEON: I was going to ask about that.

Hon. Mr. BENSON: I personally—and I can only speak personally—would like to see this ultimately accomplished. For example, in my department I have a number of solicitors and in another department you have solicitors working and

yet you do not have the co-ordination that could result from all of them being officers of the Department of Justice and responsible to the Minister of Justice.

I would hope in the future that this might be done and I think this bill is a step in the right direction, by having a Minister of Justice whose main concentration will be on conducting the legal affairs of the Crown. The Solicitor General becomes very similar to the Home Secretary in Britain, really, where you have exactly the same division of functions.

The other part, moving to the Registrar General, deals with such things as company law, bankruptcy, combines investigation, patents and copyrights. I think this is also a useful division of the functions, because these are things that deal with legal relationships between business and the Government, and the relationship between the consumer and business, and between the consumer and the government. I think these can legitimately be grouped together and be given the kind of attention they need.

Senator McCUTCHEON: There are two areas, one under the Solicitor General which is the R.C.M.P., and then the placing of the Combines Investigation Act under the Registrar General. Now, if the R.C.M.P. decide that there is evidence of crime having been committed and that charges should be laid, is that going to be done by them without reference to the Minister of Justice? I mean, if the Solicitor General is accepting that responsibility, the Minister of Justice will have no responsibility. What about co-ordination?

Hon. Mr. BENSON: The Solicitor General will carry out the investigating function under his department. If there was to be a prosecution by the federal Government, the evidence would be turned over to the Department of Justice which will carry out the prosecution. This is the same situation as you have in many cities in Canada, and it is the same situation as you have in Britain. The investigating function and the recommendation that a charge should be laid is determined by one person, and then in the case of a city, the case goes to the crown attorney, who makes the final decision. The police don't make the decision. They send the facts to the crown attorney, who decides. In Britain you have the Home Secretary doing the same thing. In fact that is what is done now here. The R.C.M.P. make the investigation and then the information goes to the Minister of Justice.

Senator McCUTCHEON: They go through it carefully there, and then on the advice of their officers they decide if there is sufficient evidence. But as I see it, you are going one extra step in this. As it is now the Solicitor General's Department will report to the Department of Justice and they will decide if there should be further investigation along these lines, and apparently it will be for the Solicitor General to decide where there will be an investigation. It seems to me that there are two people involved where only one is necessary. I raised the same question with regard to the Combines Investigation Act. Here the director or the Registrar General makes the inquiry and he does not require any permission to make this inquiry. Then he makes a report in accordance with the normal procedure and where it is found that there were people who were doing something wrong he will recommend that some action should be taken. In fact he makes the decision as to whether action will be taken or not.

The CHAIRMAN: Under this bill?

Hon. Mr. BENSON: The Department of Justice makes the decision as to whether a prosecution shall follow, but the Registrar General would make the decision as to the investigation, and all complaints will go through them. The investigation will be carried out and then the evidence will be turned over to the Department of Justice.

Senator McCUTCHEON: I suggest this bill is accomplishing nothing in that respect. At the moment the law is quite clear. The minister can direct the director to make an investigation, but at the same time the director can carry

out an investigation based on his own initiative by reason of what he reads in the financial press or from other sources of information, or where six citizens require such an investigation—it proceeds automatically. And so it goes on until the report is prepared, and then the Department of Justice makes a decision as to whether there should be a prosecution or not. Why move it from there?

The CHAIRMAN: It always struck me as being rather anomalous that you should have the initiation of proceedings in one place and then the investigation and the report always in one department. I always had the feeling it was rather overwhelming to get an impartial consideration of the evidence and as to whether or not there should be a prosecution.

Senator McCUTCHEON: I accept your view. But I am not impressed that the businessman will accept that the situation is improved by this.

Hon. Mr. BENSON: The reason for moving it, as we are suggesting, is that the Government felt that these functions which include Combines, Patents and Copyrights, should come under the one minister because they are similar areas, and they are also areas that you and I know, Senator McCutcheon, have been neglected in the past. In a huge Department such as Justice where they have so many responsibilities, the minister could not give his full attention to dealing with them.

Senator McCUTCHEON: I am in complete agreement with transferring everything except combines investigation. That is my opinion.

Hon. Mr. BENSON: It is always a matter of opinion whether or not a specific action should be taken.

Senator FLYNN: I want to ask a question about the Secretary of State. He used to be at the same time Registrar General. It seems to me that there was some consensus that the person holding that position did not have enough administrative responsibility. Now, do you say, Mr. Minister, that this bill will achieve anything in changing the responsibilities of the Secretary of State? It seems to me that it takes away much of the responsibility without replacing anything.

Hon. Mr. BENSON: It takes away the functions of the Registrar General, yes. But I would not like to say that this is a position without administrative responsibility. At the moment there are twenty or more commissions and boards which are responsible to the Secretary of State. I feel myself I would much rather function in my own department with my two deputy ministers, or three as it will be, than to deal with the C.B.C., the National Film Board and the other bodies which are part of the huge responsibility that the Secretary of State has to deal with. Secondly, the function of assistance to higher education is to be co-ordinated, and assistance—indirect assistance, I would add—to higher education, will be under the direction of the Secretary of State. At least it is going to be handled through the Secretary of State. This is going to be a growing responsibility. It has been said by Bladen that something in the neighbourhood of \$500 million a year of federal money will have to be given in assistance to education—again I would stress indirect assistance.

Senator McCUTCHEON: Are the university grants being administered by the Secretary of State?

Hon. Mr. BENSON: They are in fact being transferred at the moment.

The CHAIRMAN: What does the reference to corporate affairs mean in this context?

Hon. Mr. BENSON: Administration of the Canada Corporation Act and related matters. I think we have here a reasonable combination of functions. What in fact is being done here is to take the existing functions and sort them out. It is reallocation. For example, I become the President of the Treasury

Board, if this bill goes through the Senate. That does not mean that I hire more people. It does not mean that we are setting up a separate department. Our present staff of approximately 200 people will be administered through Finance or through the Privy Council Office. This will not mean any addition to our costs.

Senator McCUTCHEON: You say the Department of Finance will provide the administration? I thought this was to be done by the Privy Council?

Hon. Mr. BENSON: In so far as our ordinary day-to-day administration is concerned, if our department is located near the Privy Council Office, it will be administered there. If we are down in Confederation Building it will be much easier to have Finance administer it.

The CHAIRMAN: Am I correct in assuming that, for example, all the legal staff will now come under the Department of Justice?

Hon. Mr. BENSON: No, this bill does not provide for that. It is a step in that direction, but that has not yet happened.

Senator McCUTCHEON: So that you will still have legal officers in other departments?

Hon. Mr. BENSON: If that took place it would not be any different from what happens now regarding officers representing the Comptroller of the Treasury in the Department of Finance. They are located within the departments but carry out Comptroller of the Treasury functions within the department.

Senator McCUTCHEON: It also means that opportunities for promotion within the Department of Justice might be better than opportunities for promotion within the Department of, for example, Fisheries?

The CHAIRMAN: That is right. Any other questions?

Senator McCUTCHEON: Are we going to have the Minister of Manpower and Immigration before us, Mr. Chairman?

The CHAIRMAN: I had hoped we might get all the answers we required from the minister who is with us. To the extent that we didn't, and that he did not live up to that expectation, we would have to go further afield. However, so far he has been handling them very well.

Senator McCUTCHEON: It is difficult to tell when you have all the answers, Mr. Chairman.

The CHAIRMAN: If he does not have all the answers he is the first one who will admit it, I can tell you that.

Senator McCUTCHEON: What is the rationale for combining Manpower and Immigration? I can understand the setting up of a Department of Manpower as distinct from the Department of Labour, although I would have hoped that the delineation between the responsibilities of the Department of Manpower in its manpower aspects and the Department of Labour might have been put before us. Maybe the minister or Dr. Davidson could make a statement on that first, and then we can pursue the other after.

Hon. Mr. BENSON: I stand to be corrected if I say something wrong here, Dr. Davidson. I do not know all about everything within the legislation.

Senator McCUTCHEON: But you are appearing as the President of the Treasury Board. You will have to know all about everything pretty soon.

Hon. Mr. BENSON: It seems to me one of the things we have to worry about in Canada is having people available to fill particular jobs and trained to do this. Some minister has to be responsible for the determination of how manpower policies are going to move forward and how we are going to get the

working people—whom I differentiate from top management—"financiers," I was going to say, but that is a bad word to use in the Senate—

The CHAIRMAN: Anywhere.

Hon. Mr. BENSON: —who have to be trained and ready. At the same time we have an immigration policy under which we decide who is going to come into Canada. Basically, what happens in Immigration is that the minister decides, through the policy put forward to the Government and approved by the Government, what kind of people we want to enter the country. Nobody could know better than the Minister of Manpower, whose responsibility it is to have people trained and ready for jobs in Canada. This will be his dual function. On the one hand, he will be responsible for having people in the country to fill particular jobs; and, on the other hand, as Minister of Immigration he can seek the kind of people we need to come into the country over a period of time, or perhaps immediately, to fill the manpower gaps we have within our country. Using this sort of thinking, I think one can justify having the two together.

Senator McCUTCHEON: Do you think this will result in hardrock miners coming into the country, even though they have not Grade X education?

Hon. Mr. BENSON: I should indicate that when the bill was in the house we changed the title from "Minister of Manpower" to "Minister of Manpower and Immigration" to recognize there are other factors in Immigration, such as humanitarian factors, as well as the sole necessity of fulfilling manpower needs.

Senator McCUTCHEON: The point that concerned me is that there may be an irresistible temptation on the part of the Minister of Labour, in his role as Minister of Immigration, to turn the tap on and off, depending upon the economic situation or the employment situation or the unemployment situation, whatever you want, in the country at the time. I think we are probably short of the people we need today, and we are abundantly short of them because the tendency has been—and I am not blaming any one government for every Government I know of has done it—that as soon as the unemployment figures go up they turn the tap off. People in Germany who might have thought of coming here are at least not encouraged and sometimes, possibly, discouraged. I think the immigration policy has to be determined in a broader perspective than it has been in the past. This is what worries me here. I believe they have the same thing in Australia. I think the Minister of Labour is also the Minister of Immigration in Australia. I am told by people who know, that it does not work too well, for the reason which seems to be almost inevitable, that he says, "I have all these people I have to re-train, why should I bring in more?"

Hon. Mr. BENSON: The tap has been turned on and off in the past when the departments were separate. The aim of bringing the departments together, of having Manpower and Immigration together, is to ensure that the Minister of Manpower can work out long-term requirements within Canada, rather than taking a look at an immediate situation in our country and saying, "Unemployment is high, turn off immigration." He can look forward to what our country will need in the future, and thus build immigration policies which will provide in the long run what we need, rather than having an on-and-off turning of the tap, as happened when the departments were separate.

Senator McCUTCHEON: I have great confidence in the present minister, and I hope that will be the result, that there will be a long-range view taken rather than the very short-range view we have had in the past.

Would the minister like to indicate to us when we will receive the White Paper on immigration?

Hon. Mr. BENSON: Very soon, I hope.

Senator McCUTCHEON: As soon as possible, Mr. Chairman?

The CHAIRMAN: You are not adding the words, "and, in any event, not later than . . .".

Senator McCUTCHEON: No.

Hon. Mr. BENSON: I will not say, "Later this day."

Senator McCUTCHEON: No doubt you have seen the presidential addresses delivered at the annual meeting of Falconbridge Mines and one or two similarly placed companies complaining that under the Department of Immigration's present policy they cannot bring people into Canada who they would train, support and provide with jobs in the hardrock mining because they have not Grade X education, which is apparently one of the qualifications today. You could have a general qualification for Grade X for people not coming to specific jobs and who have not reputable employers who say, "We will look after them." These people are saying, "We cannot find the men in Canada. We can find them outside, but the department will not let us bring them in." Would the minister like to comment?

Hon. Mr. BENSON: Again, I am not an expert on immigration or manpower, but we have miners in Canada who are worried about jobs. Bell Island is an example. One of the things I would like to see is that before we bring in other people to do the relatively—and I use the term "relatively" not with any aspersions—unattractive work in the mines, we should take every opportunity to move people in Canada from places where packets of unemployment exist to these other places in order to make the fullest possible use of the labour force we have in this country. The achievement of this objective has been hindered in the past because of lack of mobility.

As you know, Senator McCutcheon, one of the things that has been done very recently is that we have introduced legislation whereby we give grants and loans to people to encourage them to move to where work exists in the country.

Senator McCUTCHEON: Will a man at that economic level accept a loan he has to repay within two years?

Hon. Mr. BENSON: It is a grant if he has been out of work for more than four months. Also, in specific areas it is a grant even for a shorter period of time. Where a mine closes down the minister has the right to specify the area. He has the right to name a specific area and make these immediate grants in that area, rather than having to wait for a short-term period, to encourage people to move to where the work is.

Senator McCUTCHEON: Has there been any effort made to move people from Bell Island to the Sudbury area?

Hon. Mr. BENSON: Yes, I believe there has been.

Senator BENIDICKSON: The minister in answer to Senator McCutcheon's question used the word 'before' something is decided" with respect to this complaint of the mines. Actually, the complaint to the Government regarding the labour shortage by the mines was made at least 18 months ago.

Senator McCUTCHEON: Within the last two months they have said nothing has been done about it.

Senator BENIDICKSON: They have not said that. While reference was made to the annual report that I have been talking about, I think it has been a feature of every mining report I have read in the last three or four months.

Hon. Mr. BENSON: Certainly, despite the very rosy employment situation we have in Canada—for which nobody should take credit except the Government—there are still many untrained people in this country, capable of being trained to do the mining work, who could be employed in the mines if we could encourage them to move to the mining areas.

Senator BENEDICKSON: My point is that that was said 18 months ago.

Hon. Mr. BENSON: That is true, but I do not think there is a shortage in this country of the type of person who can be trained as a miner.

Senator McCutcheon: Providing they leave the Maritime provinces?

Hon. Mr. BENSON: I am not saying we should encourage people to leave any particular area of Canada, but we have been encouraging people to move from areas of high unemployment to areas in which there is employment for their particular skills.

Senator BAMP: In other words, you are trying to move these people from Bell Island?

Hon. Mr. BENSON: We are encouraging people to—I should not mention any one area, because people will say: "You are trying to get us out of here". What we are saying is that people in areas of present high unemployment should move to other areas where they can get jobs with their relatively lesser skills.

Senator BENEDICKSON: In this regard reference was made to a very good Antismoking bill, but I think there is authority already existing for moving people in a situation such as that of Bell Island.

Hon. Mr. BENSON: Yes, we have got that.

The CHAIRMAN: Are there any other questions?

Senator McCutcheon: Turning to the new Department of Energy, Mines and Resources, will the minister have jurisdiction over offshore mineral rights? Will he have that jurisdiction in so far as the federal Government believes it can exercise it?

Hon. Mr. BENSON: Yes. I know that the senator is referring to the particular question of Hudson Bay and the islands, and that sort of thing.

Senator McCutcheon: That is right.

Hon. Mr. BENSON: I do not think I could really add anything to what was said in this regard in the House of Commons.

Senator McCutcheon: Is there still that division in the bill?

Hon. Mr. BENSON: It is not in the bill as such, and it could be changed. As a matter of fact, I should point out that many of the things proposed in this bill are set out there so that people will know what the Government's intention is. A good many of these changes could have been carried out and, in fact, have been carried out under the Transfer of Duties Act.

Senator McCutcheon: Most of them have already been carried out, have they not?

Hon. Mr. BENSON: A great many have, yes.

Senator BENEDICKSON: Another specific factor here is that hitherto, irrespective of the law respecting authority over offshore mineral rights, the actual administration federally of anything to do with offshore mineral rights has rested with the Minister of Northern Affairs rather than—

Hon. Mr. BENSON: Yes, and now it will be under Energy Mines and Resources.

Senator McCutcheon: Do I take it from clause 41 that the Minister of Energy, Mines and Resources will from here on be the Chairman of the Scientific Committee of the Privy Council?

Dr. DAVIDSON: No.

Senator BENEDICKSON: That is the Minister of Industry.

Senator McCutcheon: Is this reference in clause 41 limited to scientific and industrial research? I did not realize there were two committees.

Dr. DAVIDSON: Your first interpretation is correct. I am sorry.

Hon. Mr. BENSON: Yes, that is correct.

Senator McCUTCHEON: It is what is known as the Scientific Committee of the Privy Council which is now under the Minister of Industry. It is being transferred.

Hon. Mr. BENSON: That is correct.

Senator McCUTCHEON: It may be spelled out here, but does that mean that the Atomic Energy Control Board and Eldorado will—

Hon. Mr. BENSON: They have already been transferred.

Senator McCUTCHEON: They have been transferred?

Hon. Mr. BENSON: Yes.

Senator McCUTCHEON: To the Minister of Energy, Mines and Resources?

Hon. Mr. BENSON: Yes, that is right.

Senator FLYNN: Mr. Minister, I do not know whether my colleague who followed me in this department will agree with me, but I believe the new title of this department is something that should be considered. It is to be known as the Department of Energy, Mines and Resources. Energy and mines are resources, are they not?

Hon. Mr. BENSON: Yes, but, you know, you have to keep people happy.

Senator FLYNN: I know that this is the principal purpose, especially in regard to mines. I know that the mining community would not like to see the word "mines" taken out of the title, but was there not any other way of giving a new name to this department than making it just a repetition. I would say that energy and mines are resources. I would suggest the title "Mines, Sciences and Techniques". I should like to hear your view on that.

Hon. Mr. BENSON: It is like calling your son John or George, is it not?

Senator FLYNN: What the department is really concerned with is scientific research and techniques.

Hon. Mr. BENSON: Technological advance, really. As I said, when you chose a name, it is a matter—

Senator FLYNN: To me the name that has been selected is simply—

Hon. Mr. BENSON: Mind you, there is a new emphasis here on energy.

Senator FLYNN: That is a resource, and so are mines.

Hon. Mr. BENSON: That is correct.

The CHAIRMAN: I suppose, if you were looking for a short name, you would use the single word "Resources".

Senator FLYNN: Yes. In fact "Science" would be much more appropriate, if you want to describe the operations and responsibilities of this department.

The CHAIRMAN: "Resources" might be a broader word than "science".

Senator FLYNN: No, because the responsibility of the Department of Mines is not in the field of exploration. It is in the field of research into the use of minerals. The department has really no direct responsibility for exploration. The word "mines" is in there only for the reason the minister has indicated. It is because the mining community likes to be remembered in the administration in this way.

Hon. Mr. BENSON: I can tell you that it is the little things that cause much soul searching in the preparation of a piece of legislation and the giving of a title to a department. What does the title "President of the Treasury Board" mean to the public?

Senator FLYNN: It is like "President of the Privy Council".

Hon. Mr. BENSON: It is a matter of choice.

Senator McCUTCHEON: To whom will Crown Assets Disposal Corporation be responsible?

Hon. Mr. BENSON: It remains in Defence production.

Senator McCUTCHEON: It remains in Defence Production?

Hon. Mr. BENSON: I should indicate that Defence Production will ultimately be the Department of Supply of the government. Here is another place where a great deal of reorganization has been taking place quietly in respect to changing it into the supply department for the whole Government.

Senator McCUTCHEON: The Government is proposing to implement the recommendation of the Glassco Commission in that regard?

Hon. Mr. BENSON: Yes. As a matter of fact, it is being implemented in everything except the change of name at present, including such things as consolidating warehousing facilities in various parts of the country. It will ultimately be the Canadian Government Supply Service, and I trust its name will reflect that.

Senator McCUTCHEON: Then that is the logical place for Crown Assets Disposal Corporation?

Hon. Mr. BENSON: Yes.

Senator McCUTCHEON: Or it should be wound up. With respect to clause 21, what additional responsibility does this give the Department of Public Works?

The CHAIRMAN: Clause 21, did you say?

Senator McCUTCHEON: Yes, clause 21.

Hon. Mr. BENSON: The Department of Northern Affairs was the residual legatee of all lands not under the management and control of other departments, and that responsibility is now transferred to the Department of Public Works. It is quite a while since I read the report of the Glassco Commission, but as I recall it this is in line with its recommendation, that there should be a real property inventory taken of all government property holdings, and that responsibility for the real property management in the Government should be allocated, as far as possible, to one department.

Senator McCUTCHEON: The Glassco Commission recommended that, except property held for and managed by the Department of National Defence and, of course, Crown companies. But, this does not go that far.

Hon. Mr. BENSON: No, but what it does is take all the residual property holdings which have hitherto been under Northern Affairs and transfer them over to Public Works. A real property inventory is being prepared. We are presently working on this.

Senator McCUTCHEON: The land inventory will be a total inventory, and will include all land no matter what department administers it?

Hon. Mr. BENSON: Yes. It will be the responsibility of the Department of Public Works.

Senator McCUTCHEON: How long will it take to finish that? It was started three years ago.

Hon. Mr. BENSON: Well, we have been working on it for three years, and I am told that at the present time there is a skeleton inventory, and the details of it are being filled in.

Senator McCUTCHEON: I am not suggesting it is a small job.

Hon. Mr. BENSON: No.

The CHAIRMAN: I can imagine it is a very big job. Are there any other questions? Are you ready to report the bill?

Senator FLYNN: Are you not going to deal with it clause by clause?

The CHAIRMAN: Is it the wish of the committee to go through the bill clause by clause? We have been jumping through various clauses in the bill.

Senator McCUTCHEON: Mr. Chairman, there is nobody here who can say that these repeals and amendments are accurate. In a bill of this nature you have got to take a great deal on faith, unless it is considered for four or five days.

Hon. Mr. BENSON: The legal officers of the Crown assure me that adjustments have been made properly as recorded in the amended bill.

Senator McCUTCHEON: If they turn out to be wrong, they will amend them?

Hon. Mr. BENSON: We shall have to.

The CHAIRMAN: It would not be the first time.

Senator McCUTCHEON: No.

The CHAIRMAN: Are you ready for the question? Shall I report the bill without amendment?

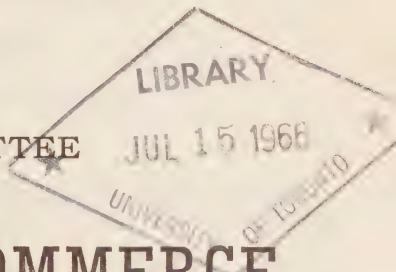
Bill reported without amendment.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE



The Honourable SALTER A. HAYDEN, *Chairman*

No. 17

Complete Proceedings on Bill C-186,
intituled: "An Act respecting allowances to persons being trained
under technical and vocational training programs".

WEDNESDAY, JUNE 15, 1966

WITNESSES:

Department of Citizenship and Immigration: W. R. Dymond, Assistant
Deputy Minister; *Department of Labour:* R. H. MacCuish, Director,
Training Branch; *Unemployment Insurance Commission:* J. W.
Douglas, Legal Adviser.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Leonard	Thorvaldson
Croll	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Davis	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McDonald	White
Fergusson	McKeen	Willis—(50)
Flynn	McLean	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 14, 1966:

"Pursuant to the Order of the Day, the Honourable Senator Urquhart moved, seconded by the Honourable Senator Argue, that the Bill C-186, intituled: "An Act respecting allowances to persons being trained under technical and vocational training programs", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Argue, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNeill,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 15th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2.00 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Baird, Cook, Croll, Davies, Flynn, Gershaw, Gouin, Irvine, Kinley, Lang, McLean, Paterson, Pearson, Rattenbury and Vaillencourt. (18)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-186: "Training Allowances Act, 1966" was read and examined.

On Motion of the Honourable Senator Croll it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-186.

The following witnesses were heard: Department of Citizenship and Immigration: W. R. Dymond, Assistant Deputy Minister. Department of Labour: R. H. MacCuish, Director, Training Branch. Unemployment Insurance Commission: J. W. Douglas, Legal Adviser.

On Motion of the Honourable Senator Pearson it was Resolved to report the said Bill without mendment.

At 2.25 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

STANDING COMMITTEE

REPORT OF THE COMMITTEE

WEDNESDAY, June 15th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill C-186, intituled: "An Act respecting allowances to persons being trained under technical and vocational training programs", has in obedience to the order of reference of June 14th, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 15, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill C-186, respecting allowances to persons being trained under technical and vocational training programs, met this day at 2 p.m., to give consideration to the bill.

Senator Salter A. Hayden in the Chair. The committee agreed that a verbatim report be made of the committee proceedings on the bill. The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: We have with us Mr. W. R. Dymond, Assistant Deputy Minister of the Department of Citizenship and Immigration; Mr. R. H. Mac-Cuish, Director of the Training Branch of the Department of Labour, and Mr. J. W. Douglas, Legal Adviser of the Unemployment Insurance Commission. Do you want Mr. Dymond to make a statement first, or do you wish to commence with questions? I understand that Senator Kinley wishes to ask a question.

Senator KINLEY: I am interested in only one feature, Mr. Chairman. Section 3(a) states:

one hundred per cent of the costs incurred by the province in providing persons being trained under the program with basic training allowances payable in each case at the rate of thirty-five dollars per week;

Is it anticipated that the province will pay the whole, or will industry cooperate with the province in the carrying out of the provincial program?

W. T. Dymond, Assistant Deputy Minister, Department of Citizenship and Immigration: In the main, these allowances at the present time will be paid by the province to persons who have been unemployed. We refer to a provincial training program, and the allowance would be paid by the provincial authorities to the trainee. Industry would not be involved in that payment of allowances under the agreement.

Senator KINLEY: You are talking about unemployment now?

Mr. DYMOND: Yes.

Senator KINLEY: I am interested in employed persons. There are two projects in Nova Scotia at the present time. First, there is the indenture of apprentices, a program which I know is being shared by industry in Nova Scotia. If the person is single and lives at home he receives \$10 a week. If he lives outside the home he receives \$15 a week. If he is married and lives at home he receives \$30, and if he lives outside the home he receives \$40. This is the government living allowance under the scheme.

The CHAIRMAN: That is the provincial scheme?

Senator KINLEY: Yes; but I understand the federal Government is sharing in that now.

Mr. DYMOND: We share in those allowances.

Senator KINLEY: We have paid our men wages when they embarked on this indenture scheme, when we found they were in need, or if we needed them to qualify.

There is also an International Correspondence Schools' course, to which the employee contributes \$1 a week, and the company gives financial support and has done for years. If the person completes the course in four years he gets a certificate from the International Correspondence Schools and a Journeyman's certificate from the provincial government, which will pay 100 per cent of the cost. This was financed by the company at first. If the person fails in the course he loses his \$1 a week and the International Correspondence Schools will refund the money to the firm, less 20 per cent. This is a course that is usually taken after hours.

The government inspector comes around frequently to consult the management. I believe Nova Scotia was the first to train men in this way. I think the scheme has been more generally adopted since.

Will the federal Government agree to pay 100 per cent of the cost incurred?

The CHAIRMAN: By the province?

Senator KINLEY: By the province. Do you anticipate co-operation from industry?

Mr. DYMOND: Well, industry in many cases co-operates with the province in putting on training programs of the type you have described.

Senator KINLEY: You do not mean pay the whole cost?

Mr. DYMOND: Oh, no.

Senator KINLEY: Just the part that the Government gives?

Mr. DYMOND: That is right. Just the part the Government pays to trainees.

Senator KINLEY: I think it is a good scheme, and I would like to see it extended.

The CHAIRMAN: Senator Croll?

Senator CROLL: Have you comparable figures that we provided for in the last two years?

Mr. DYMOND: In terms of the payment of training allowances?

Senator CROLL: Yes, in numbers and dollars.

Mr. DYMOND: Under vocational training generally?

Senator CROLL: Yes.

Mr. DYMOND: Perhaps I should ask Mr. MacCuish to answer that question.

Senator CROLL: Does that take you by surprise?

Mr. R. H. MacCuish, Director, Training Branch, Department of Labour: I have not the total number in all courses. But in the programs which were particularly referred to and mentioned by Mr. Dymond dealing with the unemployed, last year there were 79,000 trained in Canada. In the previous year 60,000 were trained. In terms of money, last year the federal Government's cost was \$24 million. The previous year it was \$17 million. I cannot say what the total cost was.

Senator CROLL: I would like to know the provincial distribution, and if you have not it at your fingertips perhaps you would pass it on to the Chairman and it could be put on the record, if that is agreeable, Mr. Chairman?

The CHAIRMAN: Will that information be available today?

Mr. MacCuish: Yes, I can give it to you immediately.

Senator CROLL: My next question is on the subject of unemployment insurance. It is held in abeyance until such time as the student completes his course; is that correct? What are you doing—I suppose nothing at all—about his pension contribution? He makes no pension contribution, and of course makes no contribution to anything else. Are you covering him for compensation or that sort of thing?

Mr. DYMOND: In many of the provinces, workers in these training programs are covered for workmen's compensation grants.

Senator CROLL: In all of them? Would not that be right?

Mr. MACCUISH: Either the workmen's compensation plan or a private insurance plan.

Senator CROLL: They are covered in some way.

Senator KINLEY: They have group insurance in most of them.

Mr. MACCUISH: Yes.

Senator DAVIES: I would like to ask where the money is coming from. Is this from the Government or will you still have taxation as at the present time? When you realize that incorporated companies have 52 per cent of their profits pledged to the Government; and then, on the dividends, shareholders are income taxed—all these increased expenditures are very serious. I would like to know where the money is coming from.

Mr. DYMOND: I think you are carrying me, in that question, outside the realm of my responsibilities, senator. All I can say is that the money will be voted by Parliament for the implementation of the legislation.

Senator DAVIES: The bill should be introduced by members of the Government who know what the tax situation is, rather than by civil servants who are not conversant with the tax situation.

The CHAIRMAN: These bills represent Government policy.

Senator DAVIES: The Government must know, then, what they are doing. I would like to know where the money is coming from. Taxation today is terrific in Canada and all businesses and individuals who have any money at all are suffering severely from it.

Mr. DYMOND: I might make one comment. In so far as we are concerned with paying allowances under this legislation to unemployed people or people who are having their qualifications, their skills, upgraded, the contribution they make to the economy through being in a position to take employment or to take a much more productive job, means that the public should recoup the cost of this program a good many times over in, the long run through the increased productivity and increased employment of the people who are being trained. Therefore, it is an investment in this sense more than an expenditure.

Senator DAVIES: I understood the gentleman further behind you to say that last year it cost \$24 million. Is that correct?

Mr. DYMOND: Yes, that is correct.

Senator DAVIES: And \$17 million the year before that?

The CHAIRMAN: Yes.

Mr. DYMOND: My point only being that the economy and the tax system will recoup this expenditure over a relatively short period of time.

The CHAIRMAN: I have a question, Mr. Dymond. If a person is a prospective trainee in receipt of unemployment insurance at the time, once he goes on the program contemplated here, his unemployment payments cease during the period that he is a trainee.

Mr. DYMOND: Right.

The CHAIRMAN: There is something in this bill, in section 5, which talks about this period during which they have ceased, but that the aggregate of such times is increased by, I take it, this period of time when he would be drawing unemployment insurance, if he were not a trainee. What exactly does that mean? How does that work out?

Mr. DYMOND: For the sake of accuracy in reply I should ask Mr. Douglas of the Unemployment Insurance Commission to answer that.

Mr. J. W. Douglas, Legal Adviser, Unemployment Insurance Commission: The way this works out is that when a person has shown that he is qualified to draw unemployment insurance benefit and has made his first application, and the commission has established his total benefit entitlement—that is, how many dollars he is entitled to—he is given a 12-month period in which to draw that. If he does not draw it all in the 12 months, it lapses. If he draws it before the 12-month period is over, he can establish a new benefit.

If he had unemployment insurance, suppose he made application on 1st January and he draws unemployment insurance for one month. Then he goes on a course. Now he has 11 months more left in the period in which he can draw unemployment insurance. He may by that time have drawn four weeks. He may have six or eight or ten more weeks of insurance that he can draw on in this balance of 11 months. So while he is on this course, which might last for three months, they will increase the 12-month period by the three.

The CHAIRMAN: By the time taken on the course?

Mr. DOUGLAS: By the time taken on the course, so that when he comes off the course he has as many months leave when he comes off the course as he would have had he not gone on it.

The CHAIRMAN: But the purpose of the course is to train him so that he can more readily get a job.

Mr. DOUGLAS: That is right.

The CHAIRMAN: You mean, if he goes out and gets a job you will still pay him, as of right, his unemployment insurance?

Mr. DOUGLAS: No, no. If he has a job he is not entitled to unemployment insurance.

The CHAIRMAN: You say that at the beginning of the year he is entitled to so much unemployment insurance and you establish the amount. But that can be cut off at any moment, if he gets a job?

Mr. DOUGLAS: Right. This same thing will apply. He will start by drawing on the 1st January. He goes on a course on 1st February. He finishes the course, say, 1st July. If he gets a job right then—as we hope will happen, that the course will have fitted him to take a job when he comes out—he will not be entitled to draw unemployment insurance and it may be that the fund will never have to pay him because he was on the course.

The CHAIRMAN: It would be anomalous if you were going to train him so that he would be better able to draw unemployment insurance.

Mr. DOUGLAS: What we are hoping is that it will train him to take a better job and that he will never need unemployment insurance.

Senator DAVIES: Who makes the decision as to what trainees are available for this money?

Mr. DOUGLAS: This would be the Department of Manpower.

Mr. DYMOND: So far as the unemployed trainees are concerned, the people who are unemployed in the judgment of the employment service, who take training in order to prepare themselves for employment.

Senator DAVIES: But they must be drawing unemployment insurance before they can qualify for this.

Mr. DYMOND: No, no.

The CHAIRMAN: No. This is one group but there can be other groups.

Mr. DYMOND: Other unemployed people.

Senator PEARSON: The unemployed who have no job at all are entitled to take this course.

Senator RATTENBURY: While he is on this course, is he considered as being in employment and, as such, are stamps placed in his book?

Mr. DYMOND: No. One of the purposes of this legislation is to deem that person to be of the status of trainee rather than of the status of unemployment. That is why he is being removed from unemployment insurance.

The CHAIRMAN: This is an allowance he gets as a trainee. He doesn't have to make any accounting of that?

Mr. DYMOND: It is paid by virtue of the fact that he is in the training program.

Senator DAVIES: Is an effort made to get him a job when he is finished?

Mr. DYMOND: The whole purpose of the training program is to make him fit for whatever jobs may be available in the labour market.

Senator FLYNN: Is it taxable?

Mr. DYMOND: No.

The CHAIRMAN: Do you think there will be a rush?

Senator FLYNN: Is there a definite ruling for this?

Mr. DOUGLAS: There is an interpretation by the income tax branch.

Senator PEARSON: When does this act come into effect? There is no date mentioned in the act?

The CHAIRMAN: If there is no date mentioned, then I would imagine it would come into effect when it is assented to. Any other questions? Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee adjourned.



First Session—Twenty-seventh Parliament

1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 18

Complete Proceedings on Bill S-40,
intituled: "An Act to incorporate United Investment Life
Assurance Company".

WEDNESDAY, JUNE 29th, 1966

WITNESS:

Department of Insurance: R. R. Humphrys, Superintendent.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i>
Cook	Leonard	<i>Shelburne</i>)
Croll	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Davis	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	McCutcheon	Vien
Farris	McDonald	Walker
Fergusson	McKeen	White
Flynn	McLean	Willis—(50)

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 14, 1966:

"Pursuant to the Order of the Day, the Honourable Senator Lang for the Honourable Senator Leonard moved, seconded by the Honourable Senator Isnor, that the Bill S-40, intituled: "An Act to incorporate United Investment Life Assurance Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Isnor, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 29, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Beaubien (*Provencher*), Benidickson, Blois, Bourget, Brooks, Burchill, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Flynn, Gershaw, Gouin, Hugessen, Kinley, Lang, Leonard, McCutcheon, Molson, O'Leary (*Carleton*), Pouliot, Power, Roebuck, Smith (*Queens-Shelburne*), Vaillancourt, Walker and Willis. (30)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Croll it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-40.

Bill S-40, "An Act to incorporate United Investment Life Assurance Company", was read and examined.

The following witness was heard:

R. R. Humphrys, Superintendent of Insurance.

On Motion of the Honourable Senator Leonard it was Resolved to report the said Bill without amendment.

At 9.40 a.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, June 29, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-40, intituled: "An Act to incorporate United Investment Life Assurance Company", has in obedience to the order of reference of June 14th, 1966, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN.

Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 29, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill S-40, to incorporate United Investment Life Assurance Company, met this day at 9.30 a.m.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Honourable senators, it is now 9.30 and we have a quorum. I call the meeting to order. There are several bills before us this morning, the first of which is Bill S-40, to incorporate United Investment Life Assurance Company. A number of witnesses are appearing. The parliamentary agents are Mr. George Perley-Robertson, Q.C. and Mr. A. de Lobe Panet. The officials appearing are Mr. Gordon E. Eddolls, President of United Investment Services Ltd.; Mr. John M. Godfrey, Q.C., one of the applicants for incorporation; Mr. Stanley R. Anderson, Secretary of United Investment Services Ltd.; Mr. William R. Millar, Treasurer of United Investment Services Ltd.; and Mr. David Brown, Consulting Actuary of Eckler, Brown and Company Ltd.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: We shall hear first from Mr. R. Humphrys, Superintendent of Insurance.

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, this bill is to incorporate a new life insurance company under the name United Investment Life Assurance Company, and, in French, La Compagnie d'Assurance Vie United Investment. The bill is in standard form and has no special features. It provides for an authorized capital of \$2 million, divided into shares of \$2 each. At least \$500,000 must be subscribed before the organization meeting, at least \$500,000 paid on capital, and \$500,000 contributed to surplus before the company can set up in business.

The company will be empowered to transact life insurance, personal accident insurance and sickness insurance, and will, of course, if incorporated, be subject to the Canadian and British Insurance Companies Act.

The interests desiring incorporation are United Funds Management Limited. This is a company that was incorporated by federal letters patent in 1954 under the name of Continental Investment Research Canada Limited. The principle business of the United Funds Management Limited is the management of United Accumulated Funds Limited, a very large Canadian investment fund.

United Accumulated Funds Limited makes its shares available for purchase by the company in the usual manner by open end investment funds. Shares can be purchased for a lump sum or on a periodic investment fund or operate on a retirement savings plan and are redeemable at the option of the shareholder at

a price based on the current value determined by the market value of the assets of the fund. United Accumulated Funds at the end of March this year had assets of about \$247 million.

As I mentioned, United Accumulated Funds Limited is managed by the United Funds Management Limited, and it is this latter company, the management company, that will be the principal shareholder of this life insurance company.

United Funds Management Limited in turn is owned to the extent of about 82 per cent by the firm of Waddell and Reed of the United States. Waddell and Reed is also in the investment fund business and is the manager of a very large United States investment fund known as United Funds Incorporated, with assets of about \$2 billion.

About 82 per cent of the shares of United Funds Management are owned by Waddell and Reed. The balance are owned in Canada, principally by employees of the company or of its subsidiaries.

United Funds Management Limited are interested in having a life insurance company so that they can be in a position to offer a broader range of financial services to those who are or may become investors in the mutual funds.

It is not the intention, however, as I understand it, to confine the activities of the life company to shareholders of the investment fund. They indicate that their philosophy in providing facilities for personal savings and personal financial security is to recommend reliance not only on investment in mutual funds but also in life insurance and on the maintenance of some margin of liquid assets.

I think it is likely that the principal business of this life insurance company will be in conjunction with savings plans developed using shares of the investment fund. The present plans suggest that about 90 per cent of the business will be term insurance and about 10 per cent permanent plans.

United Funds Management Limited is a very extensive sales and administrative organization set up in conjunction with the sale of shares of the investment fund. Consequently they feel they are in a position to offer administrative services to the life insurance company which will tend to reduce the initial overhead in establishing a sales organization.

Senator McCUTCHEON: Then a salesman will not be allowed to sell life insurance?

Mr. HUMPHRYS: It is not expected that will take place, senator. The licensing of life insurance salesmen and securities sales or mutual funds is a matter that comes under provincial law, and so far I do not believe any province has permitted a single person to be authorized to sell in both fields.

The CHAIRMAN: Or to be a part-time salesman.

Mr. HUMPHRYS: Nevertheless, I think the company believes that its administrative organization can perhaps serve the two groups. There is some relevant experience available in the sense that Waddell and Reed in the United States incorporated a life insurance company a few years ago for a similar purpose and it has had some moderate degree of success.

Senator CROLL: Is this in Canada?

Mr. HUMPHRYS: No, in the United States, in conjunction with the mutual fund they are managing in the United States.

Senator CROLL: What I understand you to be saying is that when you trace the various corporate bodies about whom you have given us a good report, in the end 82 per cent of ownership is controlled in the United States by Waddell and Reed?

Mr. HUMPHRYS: Eighty-two per cent of the company that will be the principal shareholder of this life insurance company. Initially the United Funds Management will put up practically all the capital, but I understand that it is their intention as the company gets established to make some of the shares available to its employees of the life insurance company. However, I understand that United Management is to retain controlling interest in this life insurance company and ultimate control would lie with the American company.

Senator CROLL: Yes.

The CHAIRMAN: As between the American life company and this company when it is organized, the share relationship would be indirect, is that right?

Mr. HUMPHRYS: Quite indirect, and of course the American company that was formed by Waddell and Reed operates only in the United States and is not authorized to sell shares in Canada.

We have discussed the project in detail with officers of the United Funds Management and have examined the actuarial projections they have made by their consulting actuaries, and it seems to me that the project has a reasonable chance of success.

Normally we would have considerable doubt about supporting the incorporation of a company that planned to do such a big volume of its business in the term field, but we think the situation is considerably different here, because of the likely link with permanent savings plans involving the use of the shares of the fund, so that considerations that normally would apply to a company dealing with a large volume of term insurance are not applicable here.

Senator CROLL: What do you mean by "term field?"

Mr. HUMPHRYS: It appears that this company will be writing the bulk of its business in term insurance as compared with insurance that runs for the whole of life. Normally, if a company or firm dealt only in term insurance, its chance of success would be rather poor, because so much selection is against it and the general level of premiums would be low. But this is in a different context because it will be operated in conjunction with a mutual fund, so that persons who will take out term insurance are likely to do so as part of their savings plan, which involves also the purchase of mutual fund shares. We think therefore, that there is a better chance of success than if it were standing alone and merely trying to sell term insurance.

Senator McCUTCHEON: How are they going to operate together other than on an administrative level? The normal thing to do would be to sell the individual the savings plan under the mutual accumulating fund. And then you say: "But you may not live to complete this plan, and therefore we are going to sell you some decreasing term insurance to offset it." It is not my problem, it is their problem, and they are going to have their agents go out in pairs?

Mr. HUMPHRYS: I do not know how they are going to work that out, senator. They cannot have the same person doing it. It seems to me fairly obvious that they will make it known to their customers that insurance is available in certain directions.

Senator CROLL: Is there any other insurance company emphasizing this sort of venture with term insurance?

Mr. HUMPHRYS: Not to this extent, senator. You may recall that last year Parliament incorporated a company known as the Principal Life Insurance Company. The sponsors of that company were a group in Calgary, in a similar type of business to that followed by the proposed incorporators of this company, but the Principal Life has not yet got organized, so there is no other company which is concentrating so intensely on this field, as this present one.

Senator CROLL: Is there anything here that involves being a tied company?

Mr. HUMPHRYS: Not directly, sir. The only concern we have in this area is this. In life insurance and other insurance companies that are part of a financial complex, we try to see to it that the funds of the life insurance company are not invested in other associated companies. We try to see to it that the investments of life insurance companies and other insurance companies are arm's length investments, so that there can be no doubt about the investment being made in the best interests of the life insurance company and ultimately of its policyholders. This is the only area where I feel there is any possibility of problems in having insurance companies owned in financial complexes.

The CHAIRMAN: You might expect the same financial or investment policy?

Mr. HUMPHRYS: Yes.

Senator LEONARD: Could the funds of the United Accumulated Funds be an authorized investment for a life insurance company?

Mr. HUMPHRYS: They could be. If they had the requisite dividend, they could come under the law.

Senator LEONARD: They still could come under the section that administers the amount and the kind of security that will be held?

Mr. HUMPHRYS: Yes.

Senator WALKER: You watch them carefully and keep a close check on that?

Mr. HUMPHRYS: Yes, sir.

Senator WALKER: This United group is very successful one is it not?

Mr. HUMPHRYS: Yes. I did not mean to imply by my remarks that there was any problem or that we expected any problem. I was answering Senator Croll, trying to describe what might be the significance of insurance companies being formed as part of a financial complex.

The CHAIRMAN: You were talking about the possible area of concern.

Senator LEONARD: In connection with term insurance, a larger reserve would be required in connection with that type of policy, would it not, or adequate reserve, anyway?

Mr. HUMPHRYS: Not necessarily larger. The reserves would be computed in standard actuarial procedures and they would be required to be sufficient and cover the liabilities being undertaken.

Senator KINLEY: Are there any associated companies that you are thinking about that form the background of the insurance? This always occurs to me and I do not see how they can expand so much and make money, because if they are associated they are restricted in their profits.

Mr. HUMPHRYS: They are associated in the sense that the life insurance company as proposed will be owned principally by United Funds Management Limited, and United Funds Management Limited also manages United Accumulative Fund. So there is this connection, to that extent, between the investment fund and the life insurance company.

Senator KINLEY: Is one of those an American company?

Mr. HUMPHRYS: No, they are all Canadian.

Senator KINLEY: It is not affiliated with an American company?

Mr. HUMPHRYS: The United Funds Management Limited, the controlling company, is itself controlled by a United States company.

Senator KINLEY: If an American company and a Canadian company are associated, how do they fit under the income tax law? I could never quite understand that. It seems to me that you get to the point where you are rather

foolishly trying to have more companies controlled by one, but you are only allowing profits from one company, that is the maximum profits from one company.

Mr. HUMPHRYS: The investment fund is a mutual fund and it is owned and controlled really by its own shareholders. I do not like to speak on the Income Tax Act but I understand that the tax position there is that the shareholders of that mutual fund pay tax as individuals on the dividends they get from the fund.

Senator KINLEY: Yes, but nobody has got control.

Mr. HUMPHRYS: It is mutual, yes.

Senator WALKER: The main object of this, as I understand it, is to afford protection for their own shareholders through an investment program in this fund. They are not going out to sell insurance?

Mr. HUMPHRYS: I believe the main purpose, Senator Walker, is to have term insurance available to supplement the savings program, to complete the program should death occur before it has been carried out. But I do not believe that the company is going to confine itself exclusively to that. I think that if they get a life insurance company established and build up the sales organization, they will not attempt to limit the salesmen and say, "You may sell only to shareholders of United Accumulative Fund". I think they will let them carry on their sales activities in the normal fashion of life insurance agents.

Senator CROLL: Mr. Humphrys, is there any department of Government, federal or provincial, that has any supervisory responsibility over accumulated funds?

The CHAIRMAN: You mean over any such funds?

Senator CROLL: Over any?

Mr. HUMPHRYS: I would say, no, not at the present time. Most of the larger cumulative funds have been incorporated by certain letters patent, but they fall into an area that is not supervised by any federal legislation, and they do not exactly fit into the securities legislation in the provinces. So it is an area that is a little bit between.

Senator CROLL: It is a little bit of vacuum.

The CHAIRMAN: Are there any further questions? I indicated to you the various representatives who are here. Does the committee wish to hear any of them?

Hon. SENATORS: No.

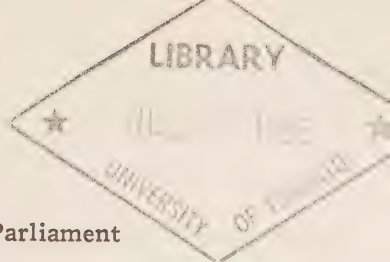
The CHAIRMAN: Are you ready to report the bill?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee concluded its consideration of the bill.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 19

*Complete Proceedings on the amendments by the House
of Commons to Bill S-17,
intituled: "An Act to amend the Bankruptcy Act".*

WEDNESDAY, JUNE 29th, 1966

WITNESSES:

*Department of Justice: The Hon. Lucien Cardin, Minister;
The Hon. L. T. Pennell, Solicitor General.*

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Leonard	Thorvaldson
Croll	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Davis	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McDonald	White
Fergusson	McKeen	Willis—(50)
Flynn	McLean	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, June 27, 1966:

"A Message was brought from the House of Commons by their Clerk to return the Bill S-17, intituled: "An Act to amend the Bankruptcy Act",

And to acquaint the Senate that the Commons have passed this Bill with six amendments, to which they desire the concurrence of the Senate.

The amendments were then read by the Clerk Assistant, as follows:—

1. *Page 5, Line 31.* Strike out subsection (8) of clause 3A of clause 3.

2. *Page 7, Line 7.* Delete the words "or may not" and substitute the words "but need not".

3. *Page 18, Line 30.* Insert immediately after clause 20 the following new clause:

"21. The said Act is further amended by adding thereto, immediately after section 169 thereof, the following section:

'169A. (1) Where a petition for a receiving order or an assignment has been filed under this Act in respect of a corporation, the *Winding-up Act* does not extend or apply to that corporation notwithstanding anything contained in that Act, and any proceedings that are instituted under the *Winding-up Act* in respect of that corporation before the petition or assignment is filed under this Act shall abate subject to such disposition of the costs of those proceedings to be made in the bankruptcy proceedings as the justice of the case may require.

(2) All proceedings instituted under the *Winding-up Act* before subsection (1) comes into force may be continued under that Act as if that subsection had not been enacted.'"

4. *Page 18, Line 30.* Renumber clause 21 as clause 22.

5. *Page 19, Line 4.* After the word "debtor" insert the words "means an insolvent debtor, but".

6. *Page 29, Line 28.* Renumber clause 22 as clause 23.

With leave of the Senate,

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Hayden, that the said amendments be referred to the Standing Committee on Banking and Commerce for consideration and report.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 29, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.40 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Beaubien (*Provencher*), Benidickson, Blois, Bourget, Brooks, Burchill, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Flynn, Gershaw, Gouin, Hugessen, Kinley, Lang, Leonard, McCutcheon, Molson, O'Leary (*Carleton*), Pouliot, Power, Roebuck, Smith (*Queens-Shelburne*), Vaillancourt, Walker and Welch—(30).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Croll it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on the amendments by the House of Commons to Bill S-17.

The amendments of the House of Commons to Bill S-17, "An Act to amend the Bankruptcy Act", were considered by the Committee.

The following witnesses were heard:

DEPARTMENT OF JUSTICE:

The Hon. Lucien Cardin, Minister.

The Hon. L. T. Pennell, Solicitor General.

On Motion of the Honourable Senator McCutcheon it was Resolved to concur in the said amendments, on the following division:

YEAS—17

NAYS—7

The Motion was declared Carried.

At 10.50 a.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, June 29, 1966.

The Standing Committee on Banking and Commerce to which was referred the amendments made by the House of Commons to the Bill S-17, intituled: "An Act to amend the Bankruptcy Act", has in obedience to the order of reference of June 28, 1966, examined the said amendments and recommends that the Senate do concur in the said amendments, without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 29, 1966.

The Standing Committee on Banking and Commerce to which was referred the amendments of the House of Commons to Bill S-17, to amend the Bankruptcy Act, met this day at 9.50 a.m. to give consideration to these amendments.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Honourable senators, after we dealt with Bill S-17 the last time, it was sent to the House of Commons where it was passed with certain amendments. It has come back to us now because of those amendments.

We have here this morning the Minister of Justice, the Honourable Lucien Cardin, and the Solicitor General, the Honourable L. T. Pennell.

In connection with the amendments, I wish to say that I have looked at them. The clerk of the committee has distributed copies of the *Minutes of the Proceedings* of the Senate for Monday evening, and these minutes contain the amendments at page 657.

I do not want to be taken as saying that there is but one important amendment. However, so far as any discussion is concerned, the important amendment would be the first amendment. Possibly we should deal with the other amendments first.

I do not think you will find that they need any particular consideration. For instance, on page 7 of the bill, in line 7, it is desired to delete words. Subparagraph (2) as the bill left us, read: "Each class of creditors may or may not vote independently of others." In the Commons they have changed that by striking out the words "or may not" and they have inserted the words "but need not". It may be a happier phraseology, and I do not see any difficulty as between one wording and the other. Does the committee approve of that?

Senator CROLL: I so move.

Hon. SENATORS: Carried.

Senator CROLL: What about page 5, clause 1?

The CHAIRMAN: I was leaving that to the last because that is the one where there is likely to be some discussion.

On No. 3 a new paragraph would be added, and this has to do with the existence of the Winding-up Act. There may be proceedings going on under the Winding-up Act at the time when bankruptcy intervenes, and the question was to provide for what shall happen in that event. You will notice in the new section 21 adding section 169A to the act the provision in subparagraph (1) says that these proceedings shall abate, and you have a saving clause in subparagraph (2). That is to say that any proceedings going on before subsection (1) of this new section becomes operative shall or may continue.

Senator CROLL: I will move it.

Hon. SENATORS: Carried.

The CHAIRMAN: Item 4 is simply a renumbering of a clause. We have added clause 21. Shall this carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Item 5 on page 19, line 4 of the bill: they have felt that some emphasis is necessary as to who is a debtor, and instead of letting the word "debtor" stand by itself it has been defined to mean an insolvent debtor but not a corporation.

Hon. SENATORS: Carried.

The CHAIRMAN: Item 6: this is simply a renumbering of clause 22 as a result of what has happened before.

Senator CROLL: I move this.

Hon. SENATORS: Carried.

The CHAIRMAN: Now we come back to the first amendment on page 5 dealing with section 3A. As you will recall, one of the subsections the Senate added after very much discussion was what was subsection (8), which you will find on page 5, in which we made applicable to the Bankruptcy Act the provisions in relation to solicitor and client privilege, and made the provisions of the Income Tax Act apply *mutatis mutandis*. In the Commons, as you will see on your list of amendments, they have struck out subsection (8). The effect of striking that out is that the general provision in regard to the Superintendent of Bankruptcy having access to documents would apply; that is to say, he has the right to go in anywhere, into any solicitor's office or otherwise, and examine records and make copies. There is no provision by which a solicitor into whose office the Superintendent went might say "I claim privilege in respect of this document."

There seems to be a misconception as to what the privilege is, and may I say it is something the client enjoys and not something the lawyer enjoys. The lawyer cannot waive the privilege without the consent of the client because it is a client's privilege. I think that is all I need say about it at the moment. We have to come to a decision on this this morning, and we have with us the Minister of Justice and the Solicitor General. If they would like to add something at this point we would be very happy to hear them.

Hon. Lucien Cardin, Minister of Justice and Attorney General: I thank you, Mr. Chairman.

Gentlemen, I do not feel it is necessary for me to repeat what I told the committee when I last appeared here or to repeat what I said in the house on this subject. I do not know whether this is customary or not, Mr. Chairman, but I would like if I may to make an appeal to your committee to consider accepting the position taken by the house unanimously on the question of the solicitor-client privilege clause. I wish here to say that as you all know there is a committee revising the Bankruptcy Act, and they are progressing very well. I presume that within a period of seven to eight months the Bankruptcy Act will be completely changed, to such an extent that it will be beyond recognition. I believe most of the people who have been dealing with bankruptcies realize that the law as it stands is totally inadequate. There are many facets of it which cause it to be very difficult to administer, and it is felt that a complete revamping of the act is required. So this question of the solicitor-client privilege, which we do not now want to see in the act, is a temporary measure and then we would be able to see just what success or failure we have.

The CHAIRMAN: You are not saying that when the new act comes in it will contain such a clause?

Hon. Mr. CARDIN: I am not saying it will and I am not saying it won't. I am saying in the short period of eight months we will be able to decide better whether or not this clause is necessary.

Senator McCUTCHEON: Would it do any harm to have it in for the eight months?

Hon. Mr. CARDIN: I think it might. I think we are all quite aware of the responsibilities we have to protect the civil rights and liberties of individuals, and no one disputes that at all. I don't really believe that by adding to the Bankruptcy Act the clause similar to 126A in the Income Tax Act will contribute anything more to the protection of civil rights or the rights of the individual. I don't believe it is going to contribute anything. However I think that all the members of this committee will agree that this question of bankruptcy frauds have reached what I would call a crisis where hundreds of millions of dollars have actually been stolen, and it is a problem which is most difficult to deal with because of the inadequacy of the law.

We are not of the opinion that because of the changes we have made in the act we are going to solve the problem overnight. It is a very remunerative business for people who have not too much conscience, and we really feel that the extent of this type of crime, a very sophisticated type of crime, warrants the strongest possible measures. There should be no loopholes in the law, and I feel strongly that if we do have this solicitor-client privilege clause in the Bankruptcy Act then, not the lawyers, but the clients can give to solicitors so-called privileged documents which they do not want to have examined right off the bat, and that would, I am convinced, inhibit the superintendent from being able to make what I consider to be an effective investigation into the negotiations of certain companies.

One of the problems that has existed, and to a far greater extent than had perhaps been imagined, is the interlocking of several of these companies. If, for instance, the Superintendent makes an inquiry into a company and finds that there are documents in a solicitor's office which are supposed to be privileged and where there might be information concerning other companies involved in this and he cannot touch them, then the first thing that will happen is that those companies will be advised that they are suspected and they will destroy evidence that might implicate them thoroughly.

Senator WALKER: Mr. Minister, have not you your remedy under the Criminal Code? If you suspect conspiracy to defraud involving a lawyer, cannot you get a search warrant to go in?

Hon. Mr. CARDIN: Yes, you can, but I believe, senator, all that requires time and delay. What I feel is necessary when we start to make these investigations is that no time be lost, and even a period of 24 hours can be fatal. We feel that if we are really going to be effective in bringing this up we cannot delay the procedures.

The CHAIRMAN: Except, Mr. Minister, in connection with the search warrant procedure I suggest to you no more time would be consumed, no more work would have to be done in the preparation of the material than would have to be done under this bill. In other words, under this bill the Superintendent has to prepare his material and go to a judge to get an *ex parte* order, and in his material he has to show that there are reasonable grounds for suspecting that a person has, in connection with a bankruptcy, committed an offence under this act or any other act of the Parliament of Canada. That is what he has to show.

Now, look at the provisions under the Criminal Code. Instead of going to a judge you go to a justice of the peace or magistrate. The requirements there are:

429(1) A justice who is satisfied by information upon oath in Form 1, that there is reasonable ground to believe that there is in a building, receptacle or place,

- (a) anything upon or in respect of which any offence against this Act has been or is suspected to have been committed,
- (b) anything that there is reasonable ground to believe will afford evidence with respect to the commission of an offence against this Act, or
- (c) anything that there is reasonable ground to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant,

may at any time issue a warrant under his hand authorizing a person named therein or a peace officer to search the building, receptacle or place for any such thing, and to seize and carry it before the justice who issued the warrant or some other justice for the same territorial division to be dealt with by him according to law.

So the basic material which may be used under the amendments proposed to the Bankruptcy Act and the basic material that is required in order to operate under this section of the Criminal Code is exactly the same material and exactly the same length of time is required to prepare it. So, on the basis of loss of time it does not seem to be a problem.

Senator McCUTCHEON: Except, Mr. Chairman, he does not have to go to a judge.

The CHAIRMAN: No, he goes to a justice of the peace instead of a judge.

Senator WALKER: I was crown prosecutor and we used to get a search warrant in about half an hour.

The CHAIRMAN: In subsection 2 of the bill you see that he has to get approval of the court.

Hon. Mr. CARDIN: Basically, I think there are grounds for what you are saying, but I still believe the timing is important. If, for instance, there is an indication of criminal activity having been committed by a company, then the Superintendent will get whatever documents are required to go in and search these premises, but if in the course of his examination of documents it appears that there are documents in the hands of a solicitor, then it would require him to go back to get a search warrant in order to be able to search this particular document, and it is that spare of time, I believe, that would cause the most damage. The Superintendent is not going to telegraph his punches when he is getting proper documentation for the examination of documents in a company, and he is going to do that as quietly as possible and get into the company as quickly as possible. But if in the records of a company it appears there are further documents in the hands of a solicitor he would have to get another warrant in order to get them.

The CHAIRMAN: According to my interpretation of subsection 2 of section 3 of this bill, if the Superintendent goes to a judge and presents his material under the Bankruptcy Act as we have amended it, and gets approval of the court to go in, it is an approval to go in in particular places in respect of which he has established a basic case for suspecting fraud or some offence. When he gets a file in the solicitor's office, for instance, and finds some information there which suggests that he should go to the "XYZ" company he has not any authority at that stage which permits him to go over to "XYZ" company and he has not previously disclosed that to the judge because he did not know it at the time, and he has to go back to the judge to enlarge his order.

Hon. Mr. CARDIN: I would imagine, Mr. Chairman, if my understanding of it is correct, the superintendent would be authorized to find whatever documents are related to the case that he is investigating.

The CHAIRMAN: But he is limited by the scope of the order that he gets.

Senator CROLL: But he has possession of the documents and is doing nothing with them at all, and he sends away and gets the other order, if he needs it, and in the meantime the documents do not disappear.

The CHAIRMAN: There is no concern about documents disappearing, and if the solicitor-client position is claimed they are sealed up immediately and delivered to a trust company or some other source. The Minister of Justice is not saying he is concerned about documents in the solicitor's office, are you, Mr. Minister?

Hon. Mr. CARDIN: No; I am saying that documents that may be in the hands of the solicitor may contain information about other companies who are involved in a fraudulent bankruptcy, and where an unscrupulous man would just do this, he would take whatever documents are incriminating and hand them over to his solicitor and then plug up the whole works right there.

The Honourable L. T. Pennell, Solicitor General: May I say something at this point, Mr. Chairman and honourable senators?

The CHAIRMAN: Yes.

Hon. Mr. PENNELL: Mr. Chairman, I think honourable senators appreciate that time is of the essence in these investigations, and we went through an experience regarding search warrants in the case of the S.I.U. We were bogged down for five to six months, the matter went from court to court, documents were all tied up, and eventually the matter went to the Supreme Court of Canada. It was held that the search warrant was proper and the documents eventually released. This is one of the difficulties with the search warrant procedure because under the Criminal Code appeals are allowed.

The second point is that this is not really an abrogation of solicitor-client privilege. Solicitor-client privilege is always said to be set aside if there is any suggestion of fraud, evasion or underhandedness. Even under section 126A of the Income Tax Act, in a case where the right of privilege of solicitor-client was called into question and went to the Supreme Court of British Columbia, there the judge stressed the fact of granting privilege because there was no allegation of fraud, underhandedness or evasion. This is a long-standing rule of common law and also under section 126A of the Income Tax Act. I suggest we start here with an allegation of something underhanded, because before the machinery can be put into operation, when notice is served, the Superintendent acting pursuant to section 3A, states that he has reasonable ground for suspecting the person has committed an offence. So there is, in essence, an allegation that there is something underhanded or some fraudulent action has taken place, so even at common law or under section 126A of the Income Tax Act your privilege would likely be set aside because you cannot have justice where there is an element of fraud and a man claims privilege that would not permit a look at the document to see if fraud had been committed.

It has always been said, where there are allegations of fraud either on the part of the solicitor or client, privilege is set aside. So, under section 3A there is an allegation because before the Superintendent puts the machinery into operation he states that he has reasonable grounds for believing an offence has been committed.

Coming back to this second point, time is of the essence, and we have been through it with search warrants, and under the Criminal Code you are permitted by statute to take appeals.

As you well know, an appeal can only be taken if the statute permits it. When operating under a search warrant and the Criminal Code these appeals can quite properly go from court to court until they get to the Supreme Court of Canada. We went through all this with the S.I.U.,—it was their right—but we were bogged down. We believe that time is of the essence in these cases.

Furthermore, under the Income Tax Act the action of the state there is looking for an assessment against an individual. It is a rare case in which there is any allegation of fraud. They usually start out with an allegation of the assessment, and they want to look at the assessment. We are operating on a different footing here. This, furthermore, is an action by the Superintendent for the benefit of the creditors rather than of the state.

The CHAIRMAN: Mr. Minister, when you are talking about the Income Tax officials going in under the powers to seize, I would point out that the assessment has been already made. They are investigating the quality of the assessment to see whether there has been fraud. In other words, this section of the Income Tax Act provides the right to go in and seize documents on the basis that there may be an offence committed under the act. I cannot imagine your being so naive as to suggest that they are just looking for money at that stage.

Hon. Mr. PENNELL: With great respect, Mr. Chairman, that may be the objective in mind, but as Mr. Justice Sullivan pointed out in the Supreme Court of British Columbia, there was no mention by the Crown in that case, when they moved, that there had been any fraud or underhandedness. They just said, "We want to look at your assessment and we are now looking for these documents," and they walked in a lawyer's office and purported to seize his trust accounts. There was no allegation of fraud, and they pointed out they had not made it. With great respect, I do not want to weaken my argument by repetition, but there is a direct allegation by the Superintendent here because he said he believed an offence had been committed.

The CHAIRMAN: Under the search warrant procedure, the moment you get a search warrant and seize the documents you take them back to the magistrate who issued the order, and he gives you a direction as to what you shall do with them.

Hon. Mr. PENNELL: Yes.

The CHAIRMAN: And you have the opportunity of examining them.

Hon. Mr. PENNELL: Not until after the appeal.

The CHAIRMAN: Yes.

Hon. Mr. PENNELL: We could not get the documents in the S. I. U. matter. We could not get the documents, and we could not get on with our investigation. It was held up in the Supreme Court of Canada. Our investigation was still held up after months and months. They were held up in the court while they attacked the validity of the search warrant, as they were entitled to do.

The CHAIRMAN: They did not move fast enough because they could have looked at those documents right away.

Senator FLYNN: I wonder whether it is clear that there is no appeal under this act.

Hon. Mr. PENNELL: I understand that it is a long standing practice that I should refrain from giving a legal opinion, but under the Income Tax Act there was no appeal because the statute did not provide for an appeal under section 120A regarding the right of privilege. But, I suppose, in all propriety, I should not volunteer a legal opinion.

Senator FLYNN: You have to be sure of that, otherwise it would have no application at all.

Senator CROLL: I think the chairman could verify what the Solicitor General is saying, namely, that there is no appeal from an order under the Income Tax Act.

The CHAIRMAN: There have been appeals from the order of the judge on the question of whether the document is privileged or not.

Hon. Mr. PENNELL: My understanding is that the basic and fundamental rule is that unless the act specifically provides for appeal then there is no appeal.

Senator WALKER: Why should not section 3A(8) be put in, because, as you point out, if an offence is charged then it has no effect.

Hon. Mr. PENNELL: If we allege that there is fraud?

Senator WALKER: Yes. Why not leave it there so that we have the privilege between solicitor and client in matters where an offence is not charged. It is not doing any harm, because if an offence is charged then section 126A is obviated in any event.

Hon. Mr. PENNELL: I recognize the meat of the argument, but, with respect, it would mean that the Superintendent would have to go back to the court and allege fraud was going on, and ask to have the privilege set aside. I think speed is of the essence. So far as the Superintendent is concerned, he has to move quickly. He has made his allegation now. He alleges there has been some offence under the act, and all he is asking is that he be permitted to proceed forthwith.

Senator LEONARD: May I ask a question here, Mr. Chairman? Mr. Minister, if this particular document did disclose some other company, or some other channel, through which there might be fraud and in respect to which you want information, you would still have to go back to the judge to get a further order to go on the premises of this other company whose name is now disclosed. If you have to go to a judge in any event on the question of whether the document is privileged then it seems to me that when the decisions made that it is not privileged you can then get your order to follow up on the information.

Hon. Mr. PENNELL: That is quite right. I think we are at *ad idem* on this matter. We are stressing the speed in respect to the matter. If we want access to certain documents which may disclose other documents, or an offence in another office, then, if we have to go to the court to get an order to search, certain things can be done in the meantime before we get to that other place and conduct a search. If we have immediate access to them we can look at them, and we can then go to the court and say that we want to go elsewhere and search.

Senator LEONARD: Is there any difference in respect to speed—

Senator McCUTCHEON: Yes, because the procedures under the Income Tax Act take time. There has to be notice, and so on.

Senator O'LEARY (*Carleton*): You say that time is of the essence. If an act is wrong and if a man's rights are violated by a section of that act, then does time matter, or is it your contention that no man's rights are encroached upon here at all?

Senator McCUTCHEON: No honest man's rights are.

The CHAIRMAN: No, no.

Hon. Mr. CARDIN: None of these procedures would take place at all if in the mind of the judge or the Superintendent there is not reasonable ground to believe that fraud has been committed. This is the basis upon which we would operate. I do not believe that any honest man's rights would be infringed in this respect. What we are trying to do is to make sure that those who have committed frauds do not use this law as a loophole through which to continue their operation.

The CHAIRMAN: May I remind the committee—and this arises out of Senator Leonard's question and, I think, the minister's answer to it—when we were considering the solicitor-client privilege and the time limits that are provided in the Income Tax Act—which are 15 days after the seizure of documents in which to serve notice of appeal and 21 days thereafter within which the matter shall be heard—we did prepare a draft which cut down those time limits to five days within which to serve the notice and another five days within which the appeal

must be heard by the judge, and then there would be no further appeal. At the time I did say to the representatives of the department who were here that if this time was too much then they should tell us what time would not be too much, and we would put that time in.

Senator McCUTCHEON: He said, in effect, anytime.

The CHAIRMAN: At that time the deputy minister said that really any time would be too much because the provisions in regard to time limits did not really make any difference to the department. In other words, he was not prepared to discuss any time limit, even if it were one day or one hour. He said that the matter was of such importance that they must be able when they seize a document to look at it.

Now, time limits do enter into the matter because when they make a seizure and find it ~~loads~~ ^{leads} them somewhere else they have to go back to the court to get a further order. There is an element of time there.

Senator McCUTCHEON: I opposed the insertion of this section in committee so I would move that we accept the Commons amendment.

Senator CROLL: I will second that motion. May I ask one question. When was section 126A put into the Income Tax Act?

Hon. Mr. PENNELL: 1956.

Senator CROLL: That was when it was put into the Income Tax Act for the first time. The act was originally passed in 1917, was it not?

The CHAIRMAN: That was the first act. The present act came in about 1950, 1951 or 1952—somewhere in there. This provision was put in three or four years after the Income Tax Act was passed.

Senator CROLL: That is the point I want to make.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman and honourable senators, I find myself a bit torn. I am in the position, of course, of being a member of the Government and,—

Senator McCUTCHEON: You can correct that.

Senator CONNOLLY (*Ottawa West*): —this means that so far as the Government's position is concerned the view I express must conform with that of the Government, or I leave it. The tearing inside arises out of the fact of the great respect that I have for the committee, and for which I am now here. Although I am a member of this committee, I sit on it as a private member, and I know the valuable work it has done through the years in looking after the interests of individuals and the public at large.

I think it has been borne out by the evidence given on earlier occasions that generally speaking the public are terribly alarmed about the practices that have been developing in the field of bankruptcy as a result of widespread frauds involving very great amounts. I think it is incumbent on the Government, looking at the public interest, to do everything that it can to try to prevent this practice continuing.

It may be suggested that what is proposed is drastic. A search warrant procedure under the Criminal Code is also drastic; but what the Government is trying to do, as I understand it, is to plug every loophole that it can possible foresee to prevent a continuation of this criminal practice that has been going on in the field of bankruptcy.

The fact that the House of Commons has unanimously adopted this amendment is an indication of the way they feel. That, of course, does not bind the Senate. The Senate stands on its own feet. The Senate is an independent body of Parliament.

What I would respectfully suggest is consideration of two points. First of all, within some eight months the Bankruptcy Act will be revised generally. It will be back with us here. At that time I think the Senate Committee can again

consider this point, and I think there will be some record of practice, some record of what has been done under the provisions of the act.

Senator ASELTIME: Why not do it the other way—leave it in, and if it does not work out it can be changed?

Senator CONNOLLY (*Ottawa West*): If I may say so, Senator Aseltine, with respect, I think the conditions under which we find ourselves today in the field of bankruptcy are alleged to be so bad that the Government does not dare take a chance by not filling every loophole it possibly can. I prefer to give the instrument to make the correction as early as possible rather than to wait and see if it is going to be able to work without it.

The second point, I make with great respect, but I think it is a point the senators can very well consider as a reasonable one. The Senate and this great committee—and I always call it that every time I talk about it, whether on the floor of the chamber or outside of Parliament—have raised the warning flag about this issue. I know the lawyers are concerned about the solicitor and client privilege. As a lawyer, I would also be concerned. However, we must remember that the privilege in this case is the privilege of a client who may very well have committed an offence, and a serious offence, and perhaps one that is going to frustrate the purposes of the Bankruptcy Act.

Now, having raised the point, having had it dealt with in the House of Commons, I think if on the floor of the Senate today it is said that the Senate committee felt that this was not an appropriate amendment for the Commons to make, I say that because of the consideration that it has been given to it and because of the prevailing situation I have described—and I do not want to repeat myself again—in the circumstances the Senate should agree with the House of Commons. The understanding, of course, would always be that when the Bankruptcy Act comes back to Parliament for revision, then at that time the history of the application of this particular section will be known and there will be some experience on it, and if at that time something should be done, then it would be the duty of this committee to do all in its power to see that this be done.

I know, too, that some honourable senators will feel that this is a matter on the part of the Government, perhaps on the part of the officials, of face saving. Frankly I do not look upon it in that way. I think we are acting responsibly if we act in the way I have proposed, and as Leader of the Government in the Senate I would ask you to accept that the representations made by the ministers have been reasonable statements. By that I do not mean to imply for a single moment that anyone on the other side of the argument has made an unreasonable statement. This is a problem we all want to see solved, and solved properly. But taking all of these factors into consideration, I think the Senate would more than do its duty if it concurs in this amendment.

The CHAIRMAN: Senator Flynn?

Senator FLYNN: Mr. Chairman, the Leader of the Government has brought forward two arguments in support of his views. The first is the decision that a search warrant obtained through the Criminal Code is subject to appeal and therefore would delay procedures. I suggest that he faces the same problem with the application of the Bankruptcy Act itself under section 150 of that act, as it stands which says:

Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court—

And we are dealing with the decision of the judge of the court.

—in the following cases:

- (a) if the point at issue involves future rights;
- (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;

I do not need to go further, because I think *prima facie* we have a valid appeal here. Whether it is going to succeed is unimportant.

Hon. Mr. PENNELL: I was relying particularly on subsection (3) which says:

For the purpose of an investigation under subsection (1), the Superintendent may, without an order, examine or cause to be examined under oath before the registrar of the court or other authorized person, the bankrupt, any person reasonably thought to have knowledge of the affairs of the bankrupt or any person who is or has been an agent, clerk, servant, officer, director or employee of the bankrupt with respect to the conduct, dealings and transactions of the bankrupt concerned, the causes of his bankruptcy and the disposition of his property, and may order any person liable to be so examined to produce any books, records, papers or documents—

So when I mentioned the delay aspect I was thinking mainly of subsection (3).

Senator FLYNN: The second point is that the Solicitor General has indicated that section 130A of the Income Tax Act does not apply in cases of fraud. There would be a problem if we included it and said it is going to apply here. In the case of fraud it does not apply, so there is no problem. I suggest, therefore, that a case has not been made for insisting on deletion of this paragraph.

There has been a long discussion here, and it has been for the purpose of protecting the rights of the individual. The Leader of the Government has indicated that he may have been misinterpreted. I suggest that we can avoid that by clearly stating the reason why this committee of the Senate would insist on including this provision in the act. I think it can be made clear, because it has not been proven that the enforcement of the act would be more difficult with this provision in it, and it does not appear that the public interest would suffer either. Therefore I think, with all due respect, that a case has not been made to delete this provision.

The CHAIRMAN: Senator Lang?

Senator LANG: Mr. Chairman, I would like to support this motion to adopt the Commons position on one basis alone—perhaps it was raised by my friend here—that there is a distinction between the proceedings under the Bankruptcy Act and the Income Tax Act. One fundamental principle through our taxation law is that every citizen has a right and privilege to resist the imposition of taxation. I cannot remember the precise wording or the name of the English judge who enunciated that principle in the House of Lords. But this principle maintains throughout in the administration and application of the act. Under the Bankruptcy Act that proposition does not hold. We are dealing with a different action and relationship as between the state and the individual, and therefore my feeling is that this conclusion is inappropriate in this particular statute.

Senator O'LEARY (Carleton): Honourable senators, I hesitate to get into this discussion. I have listened to the ministers with great respect and I have listened to our Leader in the Senate with great respect; but I must confess that after hearing them I am more opposed than ever to this amendment.

What have they told us? They certainly have implied, if not stated specifically, that there are encroachments by this amendment on certain people's rights. I think this is admitted. There is no use saying: "This is true; but a desperate situation exists"—and this was the argument made by Senator Connolly—"a desperate situation exists and so it requires desperate remedies." The Solicitor General said—and, I admit very cogently—that time is of the essence.

Honourable senators, as a layman, I submit to you that, as I said before, if an act is wrong, if it encroaches in any way upon the rights of any honest citizen, then the time of its commission surely makes no difference.

We are told that in due course the Bankruptcy Act will be amended and that if there is anything wrong in the amendment such as we have put to this bill, then the Bankruptcy Act can take care of that. But, honourable senators and Messrs. Ministers, if a thing is wrong, is it made right by being made only temporary? This is the decision you are taking.

There is something more. I am not coming here and saying that these gentlemen are authoritarians or totalitarians who want to encroach on human rights and human liberties. This is nonsense. But last night in my home I took a book down from my library, called *The Constitution of Liberty*, and in that book I read this quotation from Mr. Justice Brandeis, who will be known to every lawyer in this room, and this is what he stated:

Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. The greatest dangers to liberty lurk in insidious encroachments by men of zeal, well-meaning but without understanding.

If this illustration is wrong, if there is anything which affects my rights as a citizen, then I submit to you, sirs, that this committee should not pass it.

Hon. Mr. PENNELL: We do not say it is wrong.

Senator O'LEARY (*Carleton*): I speak with all earnestness. Remember, there is something else. We are told that the House of Commons was unanimous in supporting this proposed amendment. That makes me all the more eager, or seemingly less guilty, in opposing it; because now I know I am opposing my own party as well as the other party, so no one can accuse me of being partisan at all in this matter.

Years ago, Sir Clifford Sifton, in a very famous analysis of the position of the Senate, said that its real task was not to check the encroachments of the House of Commons, though that was one of them; he said that the real role of the Senate is to protect the public right against encroachments of the executive and bureaucracy.

This is what I see here. Are we to do this because the House of Commons happens to be unanimous about this? If we feel there is a wrong here, then what the House of Commons does about it, whether it is unanimous or otherwise, should make no difference whatever.

If this amendment is wrong, this Senate should stand against it, regardless of the House of Commons.

We talk about creating a favourable image of the Senate. If we want to create a favourable image of the Senate, then let us create the public impression that the Senate, regardless of the House of Commons, is willing to stand up for the rights of the individual. This is my position.

I am told that if the amendment does not pass, some crook may go unpunished. Honourable senators, so far as I am concerned, my belief is that it is better far that a dozen crooks should go unpunished, or have their punishment delayed, than that one Canadian citizen should be deprived of his just rights. I shall vote against this proposed amendment.

Senator BURCHILL: Honourable senators, I speak as a layman, like my friend Senator Grattan O'Leary.

The CHAIRMAN: I thought you had graduated from that position.

Senator BURCHILL: When this proposal was considered before, I suggested to the committee that they should accept the position, the appeal made by the minister and the department at that time. The committee thought otherwise.

I wish to say that, apart altogether from the legal aspect, I have sat for hours in associations hearing the Government berated—and the law—because they took no action or were dilatory in their responsibility to bring about a correction or a stoppage of these very fraudulent bankruptcies which had taken

millions of dollars from the people. Very strong briefs, as strong as the English language could make them, were formulated begging and appealing to the Government to take action, quickly and urgently, to stop a very serious and critical situation.

As I understand it, this bill is designed to do that. As explained this morning, it is more or less a temporary measure, to correct a situation which prevails; and it will be overhauled again later in the year.

In view of the situation which I know exists, in trade associations throughout this land, I would be very sorry indeed to think that the Senate—though you may not agree with me—put up road blocks to stop the Government from taking what they consider is a necessary action at this particular time. I am going to vote for Senator McCutcheon's motion.

Senator WALKER: I object to that term, "road blocks". There is no road block. We have the right to our opinion. I know that Senator Burchill has previous experience, but no one has shown us, neither one of the ministers, that there is going to be any greater delay if we leave the bill as we proposed. They have the remedy under the Criminal Code. If there is fraud, this amendment to subsection (8) is not affected in any way. It is ridiculous to suggest that we are putting up a road block. This morning, neither one of these able ministers—and they are able—nor the Leader of the Senate has given us one reason why this amendment should pass.

Senator Fergusson: Honourable senators, like Senator Connolly, I sat up late over this, because of my dedication to human rights and the rights of the citizen to protection. However, I remember that in time of crisis or war, we have to forego some of those rights, for the common good. We have done this in the past when we have found it was absolutely necessary to do so. From what I have read and from what little I know, it seems to me that this country is in a crisis now in regard to the criminal bankruptcies which seem to exist.

As Senator O'Leary has said, I certainly would object very much to any encroachment on the rights of honest citizens; but I would put before you, gentlemen, that by the deletion of the amendment which the Senate has put into this bill we are not encroaching on the rights of honest citizens, it is the dishonest citizens who will be caught by this legislation. Therefore, I certainly will vote for the Commons amendment.

Senator Molson: I wish to express my support of Senator Burchill's point of view. You know well that I also am not a lawyer. I have deep respect for the privileges of the lawyer-client relationship, but I think that on this question of bankruptcy we must consider what has happened to the rights of thousands or perhaps hundreds of thousands of people who have been affected by these criminal bankruptcies. If we are concerned with the greatest number involved not having some of their rights encroached upon, then we should think in terms of the creditors who certainly outnumber the bankrupts. They are asking whom we are considering protecting.

The CHAIRMAN: Are you ready for the question? You understand it is a motion by Senator McCutcheon, seconded by Senator Croll, that the Senate accept this particular amendment. Those in favour please raise their hands. Those opposed?

The motion is carried.

Now, shall I report the result?

Hon. SENATORS: Agreed.

The CHAIRMAN: The Minister of Justice would like to say a few words.

Hon. Mr. CARDIN: Mr. Chairman and honourable senators, I wish to express my thanks and that of the Solicitor General and of the department for the confidence you have voiced. I know that it is a difficult decision for you to make,

and I would like Senator O'Leary (Carleton) to know that we do not feel that what we are doing is wrong. What we say is that there is doubt in the minds of members of both the Senate and the Commons as to whether it was necessary or not to have this provision in the bill. I do not believe what we are doing is wrong in that sense, and I can assure you and other senators that we are going to take every possible care to see there is no abuse on the part of the Superintendent or anyone in the field of these investigations. I feel that with the decision that has been taken, the Department of Justice and the Superintendent will have the tools which we feel are necessary to do the job, and we shall be in a position to report our experience to the Senate once the revision of the Code is completed. In the meantime may I express my very profound gratitude not only for your attitude but for the arguments that have been given. Believe me, this is not an easy thing to decide because there are very sound arguments for both sides of the question. I can see that there was a doubt, and we have resolved it by way of being more severe rather than less severe in a doubtful situation. I think this was the right course to take, and we will have an opportunity to review the situation in eight or nine months.

Hon. Mr. PENNELL: May I also express my appreciation of the way in which this has been handled in the Senate. I wish some of my colleagues from the other place could have been here to see how a difference in opinion can be debated in a proper spirit.

The committee concluded its consideration of the bill.



First Session—Twenty-seventh Parliament
1966

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THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 20

Complete Proceedings on,
the Agreement concerning Automotive Products between the Government
of Canada and the Government of the United States of America,
signed on January 16th, 1965.

WEDNESDAY, JUNE 29th, 1966
THURSDAY, JUNE 30th, 1966

WITNESSES:

Department of Industry: The Hon. Charles M. Drury, Minister; *Motor Vehicle Manufacturers Association:* Karl Scott, President (President, Ford Motor Company of Canada); *Automotive Parts Manufacturers Association:* D. S. Wood, Vice-President.

APPENDIX:

"A" Letter to the Chairman from the Minister of Industry
re new plants and plant expansions.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Leonard	
Croll	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Davis	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	McCutcheon	Vien
Farris	McDonald	Walker
Fergusson	McKeen	White
Flynn	McLean	Willis—(50)

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 28, 1966:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Aird, seconded by the Honourable Senator Rattenbury:

That it is expedient that the Houses of Parliament do approve the Agreement concerning Automotive Products between the Government of Canada and the Government of the United States signed on January 16th, 1965, and tabled in the Senate on March 3, 1965; and that this House do approve the same.

After debate,

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Hayden, that the Agreement be referred to the Standing Committee on Banking and Commerce for consideration and report.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 29, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.50 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Beaubien (*Provencher*), Benidickson, Blois, Bourget, Brooks, Burchill, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Flynn, Gershaw, Gouin, Hugessen, Kinley, Lang, Leonard, McCutcheon, Molson, O'Leary (*Carleton*), Pouliot, Power, Roebuck, Smith (*Queens-Shelburne*), Vaillancourt, Walker and Willis—(30).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator McCutcheon it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on the Agreement between Canada and the United States with respect to automotive production.

The Agreement concerning Automotive Products between the Government of Canada and the Government of the United States of America, was discussed and the witnesses examined thereon.

The following witness was heard:

Department of Industry:

Hon. Charles M. Drury, Minister.

It was Agreed to print as Appendix "A" a letter from Mr. Dury to the Chairman with respect to 205 new plants and plant expansions mentioned in the Minister's speech in the House of Commons on May 5, 1966.

At 11.50 a.m. the Committee adjourned until Thursday, June 30 1966, at 9.30 a.m.

THURSDAY, June 30th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Beaubien (*Provencher*), Benidickson, Blois, Burchill, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Flynn, Gouin, Hugessen, Irvine, Kinley, Lang, Leonard, McCutcheon, McDonald, Molson, O'Leary (*Carleton*), Pearson, and Smith (*Queens-Shelburne*)—24.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Agreement concerning Automotive Products between the Government of Canada and the Government of the United States of America, was further discussed.

The following witnesses were heard:

Motor Vehicle Manufacturers Association:

Karl Scott, President. (President, Ford Motor Co. of Canada.)

Automotive Parts Manufacturers Association:

D. S. Wood, Vice-President.

On Motion of the Honourable Senator Croll it was Resolved to report recommending that the Senate do approve the said Agreement.

At 10.45 a.m. the Committee proceeded to the next order of business.

Attest:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY June 30th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Agreement concerning Automotive Products between the Government of Canada and the Government of the United States of America, signed on January 16th, 1965, has in obedience to the order of reference of June 28th, 1966, examined the said Agreement and now reports as follows:

Your Committee recommends that the Senate do approve the said Agreement.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 29, 1966.

The Standing Committee on Banking and Commerce, to which was referred the subject matter of the Agreement concerning Automotive Products between the Government of Canada and the Government of the United States of America signed on January 16, 1965, and tabled in the Senate on March 3, 1965, met this day at 10.45 a.m.

Senator SALTER A. HAYDEN in the Chair.

The CHAIRMAN: We have one more item of business this morning, and that is the resolution approving the auto trade agreements. Is it your wish that the committee should have a report of its proceedings?

Senator McCUTCHEON: Yes.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: We have the Minister of Industry, Mr. Drury, here to give us a full explanation in connection with this trade agreement, and also to answer any questions the committee may ask.

The Honourable C. M. Drury, Minister of Industry and Minister of Defence Production: Mr. Chairman and honourable senators, I have had an opportunity to read the proceedings in the Senate on this matter, and your outline of the agreement, Mr. Chairman, seems to be about as complete as anything I could give. You seem to have covered pretty effectively both the purposes of the agreement and the progress made to date. Therefore I did not prepare a statement describing it or the achievements or progress to date. I can, however, and I think it might be useful, try to answer any questions that honourable senators may wish to ask.

My own view, of course, is that this agreement was a useful step in re-structuring our automobile industry in such a way that growth, and growth there was bound to be, would take place in a way which would favour Canada. It was quite clear that under the earlier arrangements further growth was going to increase very substantially our deficit on the international account. Growth in Canada was likely to be limited to the domestic market, and it would be useful, and it has proved to be useful, to make arrangements with a view to having production in Canada grow at a rate or pace greater than the growth of the domestic market, and so operate as to increase employment in Canada, to enable Canadian industry to enjoy the benefits of rationalization and scale, and to reduce the very large prospective growth in our deficit on the current account with the United States. I think these principal purposes are in the process, and I would emphasize those words 'in the process' of being achieved. The ultimate results are still some years away.

One point, of course, which is talked about frequently is the effect on the retail prices of cars in Canada. There has been some impact, modest it is true, in respect of retail prices, but there has been quite a substantial improvement in the cost of manufacture of cars in Canada. The agreement has had a beneficial effect on the cost of manufacturing in Canada, but it has done nothing so far, nor is it intended, to affect the cost of distribution and retailing in Canada which continue for the moment to be largely as they were in the past.

Senator WILLIS: I have two questions to ask. My first question is why was it done by order in council. Secondly, what would happen if the United States Congress had turned down the agreement? What position would we have been in then?

Hon. Mr. DRURY: Why was it done by order in council? Because Parliament has provided the authority, not perhaps with this specific agreement in view to do such things in an efficacious way. The law provides and as provided for a great many years the authority to the Government to act as it did, and since they have the power, I suggest they used it in a constructive, useful way.

Now, your second question, which I would have ducked in the house on the grounds that it is hypothetical, does raise a problem. I must confess that following our discussions with the administration there we were confident right from the outset that this agreement was reciprocally beneficial and it would have been rejected by the United States Congress only if some quite unnatural situation had arisen which would have made them illogical or unreasonable. But assuming, as I think one must do, that the legislature is going to be reasonable, then one could be fairly confident it would have been accepted—as, indeed, it was.

Senator WILLIS: From January until October Canada's treaty with the United States was a unilateral agreement, until such time as Congress passed it.

Hon. Mr. DRURY: Both countries were bound by the agreement, the United States just as much as we were, but under the agreement the United States administration gives its undertaking to seek from Congress the right to reduce tariffs on a retroactive basis to the date we put our tariff reductions into effect. They were bound from the date of signature, just as we were, and the administration proceeded forthwith to carry out their undertaking.

Senator WILLIS: In January, 1965?

Hon. Mr. DRURY: They started from the time of signature to seek authority from the Congress of the United States to reduce their tariffs retroactively to January, 1965.

The CHAIRMAN: Senator, the clause in the agreement, Article 6, starts off by saying:

This agreement shall enter into force provisionally on the date of signature and definitely on the date upon which notes are exchanged. . .

Senator WILLIS: But what if Congress had turned it down? I was reading the debates of Congress, and there were some pretty stiff debates.

The CHAIRMAN: You mean, looking back on it?

Senator WILLIS: I was wondering what chance we were taking, putting ours into effect immediately and they not putting theirs into effect until Congress approved it in October.

The CHAIRMAN: I have never speculated where events have dictated speculation is unnecessary.

Senator WILLIS: We were out on a limb.

The CHAIRMAN: Well, the limb did not break.

Senator BEAUBIEN (*Bedford*): When this agreement has been going for some time, am I right in assuming that all the parts that go into making a certain model "A" in Canada will cost the same as the same model "A" costs in the United States? In other words, part would be made in Canada and part in the States and, therefore, the components that make model "A", if it is put together all in Canada and the same model "A" is all put together in the States, should they cost the same, the parts themselves?

Hon. Mr. DRURY: Well, I would think, just as in any other business, the cost of manufacture will vary from manufacturer to manufacturer, and this has nothing to do with international borders or anything else. There is liable to be some difference, but in so far as the distortions in cost introduced by a tariff are concerned, these will disappear. Obviously, a man with a modern, highly automated plant producing a given part may well be able to produce it at a lower cost than a man with an obsolete plant.

Senator BEAUBIEN (*Bedford*): But if you are making wheels for General Motors you do not make them with an obsolete plant. If model "A" of General Motors is going to be assembled in Canada and in the United States, as I understand it, the motor is going to be made in the States in both cases and the wheels and certain other things may be made in Canada. If that is so, should not each part cost the same, regardless of whether it is put together in Canada or in the United States? Of course, the cost of putting it together may be different, but would not the parts cost exactly the same in both countries?

Hon. Mr. DRURY: I would think General Motors would be free, in a general way, in respect of a particular part to buy either in the United States or Canada, and, without any tariff premium, will choose the supplier who offers—given equal quality, delivery dates and reliability—at the lower price, rather than buy part of his wheels at one price from one supplier and another part of his wheels at a different price from another supplier. I am not quite sure what your question is leading up to.

One would hope that gradually the Canadian assembly plants and the American assembly plants of the large manufacturers would be regarded as part of a single, integrated whole and that model "A" of a company would not be produced or assembled both in Canada and the United States. The whole of the assembly of model "A" would be done in the United States and the whole of the assembly of model "B" in Canada, rather than have duplication of effort. And the same, to some degree, applies in relation to the parts, because a large part of the cost of these items is the investment in tooling, and tooling tends to change every time the configuration of the part or the model changes. If you can turn out all the mudguards with only one set of dies instead of two, it cuts the cost substantially of these mudguards.

Senator WALKER: Mr. Minister, in the event of a recession or a depression or a lack of demand for cars, and keeping in mind it is cheaper to produce them in the States, with the larger scale production, than in Canada, is there anything to prevent the American manufacturers from pulling out of their operations in Canada and concentrating in saving their own plants in the United States where they can produce cheaper? In other words, now we have free trade, what protection will there be for Canadians?

The CHAIRMAN: The letters of undertaking.

Senator WALKER: There is no obligation stating they are going to keep certain plants operating in Canada?

Hon. Mr. DRURY: That is correct. They do not give undertakings in respect to specific obligations, but they do however give quite explicit undertakings in respect of total volumes of production.

Senator McCutcheon: That is the Canadian manufacturers?

Hon. Mr. DRURY: Yes, that is the Canadian manufacturers.

Senator McCUTCHEON: The parents do not give that undertaking?

Hon. Mr. DRURY: No, the parents do not give that undertaking.

Senator LEONARD: But those are letters of intent or declarations of what they propose to do.

The CHAIRMAN: Letters of undertaking.

Hon. Mr. DRURY: I think it is a little stronger than a letter of intent. It is a concrete, formal undertaking on behalf of the Canadian manufacturers.

Senator LEONARD: Given to the Government by the leading car manufacturers in Canada?

Hon. Mr. DRURY: That is right.

Senator LEONARD: And they specify an increase in production from year to year?

Hon. Mr. DRURY: An increase in production in absolute terms from year to year, plus a proportion of the growth in the domestic market. If the domestic market were to remain static over the next three-year period the Canadian manufacturers would still be required to increase production in Canada.

Senator LEONARD: I do not know that those declarations, or whatever they are, are on file with us.

Senator McCUTCHEON: They have been tabled in the other place, Senator Leonard.

Senator LEONARD: Have they been tabled in the Senate?

Hon. Mr. DRURY: They have been tabled in the House of Commons.

Senator McCUTCHEON: They were certainly tabled in the House of Commons.

Senator CONNOLLY (*Ottawa West*): I will check into that.

Senator McCUTCHEON: I do not think these are firm undertakings. I am reading from Mr. Walker's letter from General Motors dated January 13, 1965, and, of course, your requirement of General Motors was that they increase the Canadian value content in addition to maintaining the present ratio, the 60 per cent, by a flat \$121 million through to the end of the model year 1968. Mr. Walker says:

In conclusion, therefore, I am prepared to say at this time that: first, General Motors of Canada has plans under way to increase Canadian value added by about \$30 million in each of the first two years of the plan; and second, we are continuing our studies of ways to accomplish the remainder of the program. . .

It goes on to say:

—to meet the full objective...by the end of the model year 1968.

But, surely, that is conditional upon his studies. What happens if he does not meet it?

Hon. Mr. DRURY: Well, there is a reinforcement in the order in council which grants this remission of duty. It defines a motor vehicle manufacturer who will be entitled to duty-free entry, and the order in council provides that unless a certain ratio of assembly in Canada is maintained, and unless the Canadian value added in Canadian assembly is maintained, the manufacturer will cease to qualify as a manufacturer and consequently will not be able to avail himself of duty-free entry.

Senator McCUTCHEON: In other words, he will cease to come under the agreement?

Hon. Mr. DRURY: Well, I would say he would no longer enjoy—

Senator McCUTCHEON: He would no longer enjoy the privileges?

Hon. Mr. DRURY: Yes, of duty-free entry. We would go back to the system that obtained before this agreement came into effect.

Senator WALKER: It would be difficult to ascertain when it came into effect. Everything is so nebulous and general.

The CHAIRMAN: They have to report every three months, do they not?

Hon. Mr. DRURY: Every quarter. We get quarterly reports, and an estimate can be made from these as to whether in fact the undertakings appear to be carried out. There is, in a sense, an element of what you call vagueness in that they have only to achieve this target figure of additional Canadian value added at the end of the three year period, and one has to make, if you like, a judgment as to whether they are progressing sufficiently fast that they are likely to be able to do it, but I suppose in the final analysis you could not declare them to be in default until the end of the three year period. I am glad to say that such evidence as we have indicates that progress is being made to the likely achievement of this figure.

Senator WALKER: I do not want to criticize for criticism's sake, but we all hoped that this agreement would result in a substantial help in the problems of balance of trade. Instead of that we have an imbalance of a further \$100 million in the first year. The chairman gave a very able speech last night hoping for the future, but he was unable to supply us with any figures, quite naturally, for 1966. Perhaps you could tell us about this. Is the thing picking up and starting to go the other way?

Senator McCUTCHEON: Let me add this, that the chairman in speaking yesterday said that the minister had made a forecast as to what might be expected to happen in respect of the imbalance, particularly, as I understood it, with the United States over the next few years. I read the minister's statements in the house, and I failed to find any such forecast. This is only to supplement Senator Walker's question. Please excuse me, Senator Walker. You did refer to the imbalance growing by nearly \$100 million from 1964 to 1965, did you not? I would point out that that is the world imbalance. The imbalance with the United States actually increased by \$190 million.

Hon. Mr. DRURY: Perhaps, without examining the figures of \$100 million or \$190 million, I might try to explain the background of the situation. Under the arrangements that obtained up until the beginning of this decade motor vehicle manufacturers, in order to secure customs concessions, were required to incorporate in cars sold in Canada a percentage of Commonwealth content, which meant Canadian or other Commonwealth country value added, in their total product.

The ratio of Commonwealth content to total cost varied with the scale of production of manufacturing in Canada. The highest figure for passenger automobiles was 60 per cent, and it went down as low as 40 per cent for those with smaller scale operations. Because the costs of production in Canada of components, almost without exception, tended to be higher than elsewhere manufacturers were careful not to exceed to any noticeable degree these regulatory requirements of a 40 per cent, 50 per cent or 60 per cent Commonwealth content, so that in the case of the largest manufacturer who had a 60 per cent Commonwealth content it meant that he manufactured 60 per cent of the cars in Canada and imported 40 per cent. With a total market of \$100 in car sales in Canada, 60 per cent of that represented Canadian manufacturing costs, and 40 per cent represented imports. As long as we were not exporting to any noticeable degree that \$40 represented a deficit, so that if the Canadian market—car sales in Canada—went from \$100 to \$200 the deficit went from \$40 to \$80, or the deficit could be expected to increase at the rate of 40 per cent of the increase in automobile sales.

Now, the Canadian market in the past three years has grown quite remarkably, and it looks as if it is going to grow even more over the next few years, and one could therefore contemplate an increase in the deficit with the United States at the rate of 40 per cent of this growth every year. Do I make myself clear?

Senator McCUTCHEON: Yes.

Hon. Mr. DRURY: What we have done in this case is to have the manufacturers undertake to either manufacture themselves or have manufactured in Canada not less than the 60 per cent provision, but also undertake the supplemental level of manufacture in Canada arising out of these undertakings which obviously can only go to export.

Senator McCUTCHEON: You are talking about \$225 million? Is that the figure?

Hon. Mr. DRURY: Yes. This has led to quite a substantial rise in our exports—a very fast percentage rise—but in overall terms compared to our import picture they are quite modest figures as yet. If we had a deficit with the United States equivalent in 1964 to what would be in round terms—

Senator McCUTCHEON: \$560 million in 1964?

Hon. Mr. DRURY: —\$560 million, and if the Canadian added production arising out of the agreement amounts to \$300 million, then there is a net increase in exports that is going to cut this deficit of \$500 million-odd by \$300 million. Do you not accept this?

Senator McCUTCHEON: I do not follow you, Mr. Minister. It went up to \$750 million in 1964, and it would appear to me that what you are saying to us—I am not saying that this is not a laudable objective, but instead of having a 40 per cent deficit on total production in Canada we will have a 40 per cent deficit less \$225 million at the end of model year 1968. What percentage \$225 million will be of the then total deficit I do not know. I have no figures, unfortunately, for 1966, but you probably have.

Hon. Mr. DRURY: The figures we have for 1966 are limited to the first three months, and perhaps they are not very conclusive.

Senator WALKER: Do the figures still show an increasing deficit, an imbalance, for the first few months?

Hon. Mr. DRURY: I am not too sure of that. The governing factor really is the rate of growth of the domestic Canadian market, which is going to reflect an increase in imports to the tune of 40 per cent of that growth, and offsetting that will be the increase in exports.

We have figures on the growth of exports but for the imports we have to wait for the figures to come from the Dominion Bureau of Statistics.

Senator McCUTCHEON: So that I understand you correctly, you said that the increase expressed in percentage is very impressive, and you set those figures out in your statement in the House of Commons?

Hon. Mr. DRURY: In 1965, that is correct. The problem has been that our starting base in exports has been so small that we have a long way to go.

Senator LEONARD: And the imbalance would probably have been greater if it had not been for the agreement?

Hon. Mr. DRURY: That is correct.

Senator LEONARD: So that the amount of the imbalance really does not benefit from the agreement at all. Our only hope is to export?

Hon. Mr. DRURY: The change in the deficit figures brought about by this agreement will be the increase in exports, because the imports remain at the same general level at the same domestic market. Our only hope of reducing this

deficit is by increasing our exports, and our only hope of increasing our exports is to reduce the cost of production in Canada so that we can export.

Senator LEONARD: Could you give us the figures? You say they are impressive in their relative increase. Perhaps we should have those figures.

Hon. Mr. DRURY: I have some figures here. In the calendar year 1962 exports to all countries were \$62 million. In 1963, to all countries \$96.7 million. In 1964, to all countries, \$186.9 million. The total for 1965 is \$362.2 million.

Senator LEONARD: So there is an increase in 1965 over 1964 of nearly \$200 million?

Hon. Mr. DRURY: Yes, \$180 million odd, but just about 100 per cent increase.

Senator LEONARD: Have you some figures for the first three months of 1966?

Hon. Mr. DRURY: On exports?

Senator LEONARD: Yes.

Hon. Mr. DRURY: No, I am sorry I have not the three months here. If that is of interest, I can obtain them.

Senator McCUTCHEON: I do not want to press this too much, but in the light of what Senator Leonard has just said—I agree with the figures you have given as to exports, that they did relatively double in 1965 over 1964 and that meant an increase of some \$180 million. However, during the same period imports increased by over \$300 million, and imports from the United States formed the bulk of that—being about \$325 million.

Senator LEONARD: Presumably that would have taken place regardless of the agreement?

Senator McCUTCHEON: That is what I cannot solve.

Senator LEONARD: Because we were still paying relatively the same price for cars.

The CHAIRMAN: The U.S. tariff reductions, of course, did not become effective until the agreement was ratified at Congress.

Senator McCUTCHEON: It became ratified retroactively.

Hon. Mr. DRURY: Are you asking if our imports of cars have increased?

Senator LEONARD: Yes.

Hon. Mr. DRURY: Yes; because now with this rationalization the imports or the assembly in Canada of some models is ceasing altogether and they will be imported from the United States—cars which hitherto, or models which hitherto were manufactured in Canada. This of course is offset by cessation of production of certain models in the United States and importation in their entirety from Canada. This enables plants on both sides to avoid duplication of assembly of both models.

Senator McCUTCHEON: What has been the effect of the agreement on the United Kingdom's manufacture of motor vehicles? They have lost their preference.

Hon. Mr. DRURY: Well, when you say they have lost their preference—provided the Commonwealth contact was maintained, the Canadian manufacturer could import duty free from the United States.

Senator McCUTCHEON: From the United Kingdom?

Hon. Mr. DRURY: No. Provided he maintained his content he could bring in up to this 40 per cent duty free from the United States.

Senator McCUTCHEON: I asked about the effect on the United Kingdom.

Hon. Mr. DRURY: The United Kingdom manufacturer or the importer from the United Kingdom has no worries about content at all. He could import duty

free. The fact of the matter is that United Kingdom manufacturers' sales to Canada in 1965 were increased over 1964, and I understand they are continuing to show an increase in 1966.

Senator McCUTCHEON: Turning to another matter, Mr. Chairman. In his statement in the house the minister actually referred to what he considered the benefits flowing directly from this agreement, and he referred to the plans for expansion of 136 plants announced in industry; in addition, the establishment of 69 new plants in Canada: making a total of 205 plant expansions in the new class. Does the minister include the Ford plant at Talbotville as being one of those?

Hon. Mr. DRURY: Certainly the Ford plant at Talbotville comes under the heading of announced expansions.

Senator McCUTCHEON: But it was only in January 1965 that the Ford Motor Company commenced plans to build a plant at Talbotville, at a cost of scores of millions of dollars was formally announced a few days before the election.

Hon. Mr. DRURY: I understand that the Ford Motor Company, like any other large organization, is continuously contemplating and engineering expansion. I venture to suggest that in the absence of this agreement this plant, which had been in a sense pre-engineered, would have been put up in the United States; but they were able to profit or take advantage of this agreement to locate this plant in Canada, in the London area, rather than to cross the border into the United States. I don't think anyone pretends that the Ford Motor Company had no plans or designs or even ideas for expansion by some of its engineers; but in this short period this is manifestly impossible.

Senator McCUTCHEON: I do not think they assembled the land in that short period either.

Hon. Mr. DRURY: If you do as I did, go down there and talk to the people who were still the owners of the land—when I was there in the spring of 1965—these are the people who were still the owners, the Ford Company had not assembled it.

Senator McCUTCHEON: Yes, but you do not assemble until the last moment. You option. You are not going to take up the option unless you get all the options you want.

Hon. Mr. DRURY: At that time there were a number of options being taken by some people, of whom only some were agents for the Ford Motor Company.

The CHAIRMAN: Some others were trying to cash in.

Senator McCUTCHEON: Obviously the minister has this information and I wonder if he would put it in the form of a letter to you, which would be appended to our proceedings. I would like to know the number of these 205 plants which are in expansion, which are completed and which are under way and which are merely announced.

The CHAIRMAN: Which statement are you referring to?

Hon. Mr. DRURY: The statement I made in the house.

Senator McCUTCHEON: It is in the left-hand column, page 4747, May 5. The reason I ask you is that I have a feeling that large companies usually make their plans very much further ahead than the minister is suggesting.

The CHAIRMAN: They also make them very flexible.

Senator McCUTCHEON: Reasonably flexible. There have been companies which have received substantial windfalls from the minister's department in other directions, of which I can speak with positive knowledge, and I am going to mention no names here. I would like to know about these plants. This is a very impressive statement; the minister comes into the house and says there

are 205 plants which are under expansion. I would like to know whose they are, where they are and what stage they are at. The minister nods his head.

Hon. Mr. DRURY: The answer, Mr. Chairman, is that I will see that this information is provided.

Senator McCUTCHEON: Than you very much.

The CHAIRMAN: Does the committee agree that when the letter is received, addressed to me as chairman, it be added as an appendix to today's proceedings?

Hon. SENATORS: Agreed. (*See appendix "A"*)

Senator McCUTCHEON: There is another matter I would like to touch on. I am not quarreling with this. My views on this subject are fairly well known, especially to the Director of Research and Investigation under the Combines Investigation Act.

Can the minister give us information—not necessarily now but in the same way as he is giving the other information—as to the number of takeovers there have been of Canadian parts manufacturers, either by American parts manufacturers or by Canadian automotive manufacturers who are subsidiaries of the American automotive manufacturers, since 1st January 1965, and what they are.

Hon. Mr. DRURY: This is not a field in which we have any kind of responsibility.

Senator McCUTCHEON: I agree.

Hon. Mr. DRURY: Consequently there is a haphazard receipt of this kind of information. Because it does not have a direct bearing on our operations, we do not endeavour either to collect it systematically or to keep any record of it.

Senator McCUTCHEON: What I am suggesting, Mr. Chairman, is that one inevitable result of this agreement, if it continues in force, is going to be a very heavy concentration—using that term in the way that the combines people use it—in the automotive business generally and in the parts business also. That is concentrated enough now in the parts business. If the Government policy were to permit that to go on in this field, it may be that it should be Government policy to permit it to go ahead in other fields.

The CHAIRMAN: This is a question where you can make observations and reach conclusions, but it is no function of the minister at this time to express any view at all.

Senator McCUTCHEON: It may not be, except that he is expressing views as to the beneficial effects of the treaty. This is another effect on which I think he could express views.

The CHAIRMAN: The beneficial effect of the treaty, and what he has said, is not identified with ownership or with who is the owner. It is just the operations.

Senator McCUTCHEON: I have made my point and I think the minister could give me the information if he chose to do so.

Hon. Mr. DRURY: Mr. Chairman, I do not want to appear to be withholding information. All I am saying is that we have scattered information.

Senator McCUTCHEON: Could we have whatever information you have, accepting the fact that it is not inclusive.

Hon. Mr. DRURY: Subject to the reservation that this does not purport to be in any way complete.

Senator McCUTCHEON: Agreed.

Hon. Mr. DRURY: And indeed it may even be misleading.

The CHAIRMAN: And not vouched for.

Hon. Mr. DRURY: It is just information we have.

The CHAIRMAN: It is like asking the doorman whether it is raining outside. He might have heard from someone that it is and may pass that information on to you. He should hardly be charged with irresponsibility for having heard the wrong thing.

Senator McCUTCHEON: I will not charge the minister with irresponsibility, if he will let us know what he has heard.

The CHAIRMAN: Senator, when you were talking about parts manufacturers, were you talking of the original parts manufacturer as distinct from the independent replacement parts manufacturer in Canada.

Senator McCUTCHEON: I make no distinction.

Senator LEONARD: What you said suggested that perhaps some of these takeovers might be violations of the Combines Act.

The CHAIRMAN: That is not part of our job this morning.

Senator LEONARD: What is wrong with the takeover? Senator McCutcheon does not think there is something wrong?

Senator McCUTCHEON: I am not saying there is anything wrong. I want to know what is happening.

The CHAIRMAN: I would say he would support concentration in some of its forms.

Senator MOLSON: We have been dealing in essence with models of cars that were made, perhaps, on both sides of the border. With the removal of the tariff, this of course applies to higher-priced models that used to be subject to duty and were not made here, cars like Lincolns, Cadillacs and the large Buicks, and so on. I would assume that probably that trade has increased as a result of the removal of the tariff?

Hon. Mr. DRURY: Frankly, I cannot answer that. Clearly, if he can bring a car in duty free as compared with the situation when he had to pay duty, the amount remaining in the hands of the manufacturer would be larger. People have suggested that this is profiteering on his part and that the price of these cars, which always have been manufactured in the United States, previously subject to duty and now are duty free—should go down correspondingly.

Probably the manufacturer's would not argue the equity of this. But the fact of the matter is that the price structure of these cars must bear some relation to value, otherwise, people will buy the bargains; and as to the rather larger type of car, and I will not mention any names—manufactured in Canada—in whose cost of production has not yet gone down substantially, they cannot reduce the price of these. If they reduced the price of the Cadillac to within \$100 of a standard Canadian manufactured car, everyone would buy Cadillacs and no one would buy the Canadian manufactured car. Therefore, in order to allow them to sell the Canadian manufactured car they have to maintain the price differential.

Senator McCUTCHEON: Reluctantly and sorrowfully they are prepared to make money.

The CHAIRMAN: Excellently said.

Senator HUGHES: May I ask the minister a question about the form of the agreement? What is this undertaking, that both sides will look at the agreement before January 1963, and see how it is working out and what changes they want to make. I do not know if I am embarrassing the minister by this question. Supposing he were to sit down today with Mr. Connor, or whoever is his opposite number in the United States, would he have any substantial change to suggest in the present agreement; or does he think it is working well?

Hon. Mr. DRURY: I would have no changes to suggest in the present agreement. The ultimate object is to establish an approach to parity, as between

Canada and the United States, of the ratio of manufacture to total domestic consumption. There was quite a gap when this agreement was initiated.

Senator HUGESSEN: That to my mind was the valuable part of the agreement, the undertaking by the U.S. that there would be parity.

Hon. Mr. DRURY: We would expect there would still be a gap immediately prior to January 31, 1968, at the time of this review, and during the review with the Americans in the fall of 1967 we would point out that perhaps the full intent of this agreement had not been realized, and that further steps were needed to get closer to parity. The warmth with which this suggestion will be received will depend on a great many things—the economic climate in the United States, the political climate there and so on, but our objective still remains to bring this gap to a minimal size.

Senator McCUTCHEON: Mr. Chairman, I am not sure whether I mentioned this when I was asking the minister for information as to plant expansion in the new plants. If he has the information, which I presume he has, would he let us know what each plant is automated to do, whether it is a stamp-out plant for stamping out bodies, or whether it is a plant for making nuts and bolts or a plant for assembling cars. What I am concerned about, and the minister might like to comment on this, is that we might find ourselves in the position where we have added exports to the extent, even if it is only \$225 million, that at the end of 1968 where we have narrowed our balance in this whole area, we find we have been assemblers and manufacturers of unsophisticated equipment and the sophisticated equipment requiring high skills will be manufactured in the United States so that if at any time the Government of the United States, which has done strange things from time to time in the past—might exercise their right in Article VII to terminate the agreement on twelve months' notice, our situation would not be a very happy one. Is there any tendency, or has the minister seen any tendency, to move out the manufacturer of more sophisticated equipment to the United States and to replace it with the more elementary manufacturing here?

Hon. Mr. DRURY: This is quite an interesting question. It is also quite a broad one. The curious thing is that the more sophisticated a plant is and the more highly automated it is the lower the skill required to run it.

Senator McCUTCHEON: That is not what the labour people say.

Hon. Mr. DRURY: I am not sure whether they are saying the same thing, but I don't see how they can deny it. The most highly skilled man in this business is the toolmaker and the diemaker, and neither of these two people operates on an automated basis. The low skills although not necessarily the lower paid are those operated on the assembly line in a highly automated plant. When you ask me whether sophisticated parts or the manufacture of such parts is being concentrated in the United States, I am not quite sure what you mean by sophisticated parts. Are you talking about the degree of individual skill required by the operator or the complexity of the machinery?

Senator McCUTCHEON: Partly the degree of individual skill and partly the value added in. I was thinking, as an example, of electrical equipment.

Hon. Mr. DRURY: The value added in a highly automated plant arises not out of the skills but out of the investment.

Senator McCUTCHEON: Out of the capital yes.

Hon. Mr. DRURY: The value added, in response to your question, is irrelevant, in my view. I think it is safe to say that because we have not in this country, certainly at the moment, a large and well-developed machinery industry in comparison with the United States, production machinery tends to be better known and cheaper in the United States than it is in Canada, so that a parts manufacturer in choosing the geographical location of his operation would

tend to situate in the United States the highly mechanized operation requiring a big investment in automated machinery, and to look to Canada as the locus of non- or to a lesser degree automated operations where the hourly wage rates tend to be a little lower. That means then, in answer to your question, that he would look to Canada for the kind of operation calling for a high degree of individual skill and seek to place in the United States those operations which require little individual skill but a high capital investment.

Senator McCUTCHEON: That rather belies your claim that Talbotville results from the agreement as I understand what that plant is designed to do.

Hon. Mr. DRURY: I am not sure that given a completely free choice Ford would have put this assembly plant, which was engineered for another location, in Talbotville, but Ford found themselves with an obligation to increase manufacture in Canada substantially. Here, from their point of view, was not the ideal way to do it, and if they had had a long time to plan it they might have done something different, but here was something that had to be done and that had to be done quickly.

Senator LEONARD: What is the consensus on the matter here? Do we approve the agreement?

Senator McCUTCHEON: Before we answer that I would like to say that I had a discussion with the Chairman a few days ago. As I understand it there is not a sense of urgency about this agreement since it has been in operation since January 15, 1965 or thereabouts. I approached the Chairman with a suggestion that perhaps we might have representatives of the three large automobile manufacturers and also representatives of some of the independent parts manufacturers. I know the minister did not accept that view in the Commons.

Hon. Mr. DRURY: While approval of the agreement is not urgent, I would hope that Canada's legislature would not show a lack of confidence in it.

Senator McCUTCHEON: This is not showing any lack of confidence. After all this was only brought to Parliament on May 5, and at the very worst, depending upon the length of any summer recess, we will deal with it more expeditiously than they dealt with it in the U.S. Congress.

Hon. Mr. DRURY: I am not speaking to this point; I am making the general observation that we would not like this to be regarded as being of no significance and that it does not matter much what is done with it. I think there are a number of people who are looking to the actions of Canada—and the Senate is an important part of Canada—to see the extent to which we have confidence in this, believe in it, and are likely to continue. As you know, Senator McCutcheon, business investments tend to be made only partly on hard facts, also partly on confidence in the future.

Senator McCUTCHEON: That is frail plant confidence.

Hon. Mr. DRURY: I am thinking of the numbers to be added to this list I am going to give you.

Senator O'LEARY (Carleton): Did not Congress take a good long look at this agreement before they passed it?

Hon. Mr. DRURY: They did, and I am not suggesting we should not take a good hard look, but, as I think was implied here, there was some doubt in some people's minds as to whether Congress would pass this, and the consequence of this doubt was that investments which would have been made in the event of the agreement being accepted were either deferred or placed elsewhere. This situation arise in Canada where because of doubts or apparent lack of confidence an investor, a corporate entity, will say, "Well, there is some doubt about this, and we will be safe and opt to set up in the United States."

Senator McCUTCHEON: The minister will agree, of course, the legislative procedure in the two countries is quite different, and no person who is knowledgeable about the Canadian Parliament or about the constitution of the Senate as it is at present would have any doubts that this resolution will in due course be approved by the Senate, when it has already been approved by the House of Commons. We may have some very unsophisticated investors—

Hon. Mr. DRURY: I was about to make that remark. We look to some degree to investors in the United States.

Senator McCUTCHEON: To a very considerable degree.

Hon. Mr. DRURY: I do not think they have that knowledge of the Canadian parliamentary system and practice that you have.

The CHAIRMAN: Senator, you made a remark about discussions with me. They were discussions between Senator McCutcheon and Senator Hayden, and I was speculating how this thing might be handled when it went to committee.

Senator McCUTCHEON: If I have offended you—

The CHAIRMAN: No, you have not offended me.

Senator McCUTCHEON: Well, it was an informal discussion.

Senator LEONARD: With Senator McCutcheon's assurance that it will be approved eventually, I do not see why we should not have other witnesses. It is not necessary to report today.

Senator McCUTCHEON: It seems worth while that we have one day so we understand the whole thing better. I hope the minister does not feel from anything I have said to date, or any questions I have asked, that I have suggested that I was going to oppose the resolution.

The CHAIRMAN: My suggestion would be, if we have asked the minister all the questions and got all the information we feel necessary at this time, we have another meeting of this committee tomorrow morning, and let us reflect until tomorrow morning and make the decision. If there is a witness available of the high calibre you would like to have here, we may be able to find some in the meantime.

Senator McCUTCHEON: You are the fellow who supplies the witnesses, invites the witnesses, Mr. Chairman.

The CHAIRMAN: No, the committee instructs. However, we will adjourn until tomorrow morning. You understand—as and when we deal with this kind of motion—the basis on which this resolution is referred to us is that we recommend to the Senate the acceptance, or not, of the resolution.

Senator LEONARD: I think we should thank the minister for his courtesy and information.

Hon. Mr. DRURY: May I thank you, Mr. Chairman and honourable senators. The committee adjourned.

OTTAWA, Thursday, June 30, 1966.

The Standing Committee on Banking and Commerce to which was referred the subject matter of an Agreement concerning Automotive Products between the Government of Canada and the Government of the United States of America signed on January 16, 1965, and tabled in the Senate on March 3, 1965, met this day at 9.30 a.m.

Senator SALTER A. HAYDEN in the Chair.

The CHAIRMAN: I call the meeting to order. This morning we resume our consideration of what I call the "automotive resolution". Today we have Mr.

Karl Scott, President of the Motor Vehicle Manufacturers Association, and also Mr. D. S. Wood, Vice President of the Automotive Parts Manufacturers Association.

The request, or almost a request, yesterday was whether to have some further witnesses and witnesses from the industry. Mr. Scott, who is President this year of the Motor Vehicle Manufacturers Association is also very firmly identified with the Ford Motor Company, I can assure you. I think the idea was that Mr. Scott would not have a prepared statement, but he is ready to answer any questions that members of the committee may want to ask. The meeting is now open to questions.

Senator McCUTCHEON: Mr. Chairman, I am delighted that Mr. Scott and Mr. Wood are here, but when we adjourned yesterday I understood that we were to ~~reassemble this morning to decide what~~ witnesses would be called. I would like to say at this stage, with all due respect to Mr. Scott, that he is one whom I would have named, but I would also like to see Mr. Walker, Mr. Todgham, and again, with due respect to Mr. Wood, to see Mr. J. G. Loveridge brought before the committee. I was a little taken aback this morning, because I think it was clearly on the record that at 9.30 this morning we were to decide what our further procedure was to be.

The CHAIRMAN: I do not think that was quite the arrangement. The statement I made was that the committee would not meet until 9.30 this morning, and that at that time if there were witnesses available we would go ahead, and if not we would decide whether we were going to delay further or continue with the material we had. Mr. Scott is here, and I suggest that we go as far as we can with him. Of course, the matter is in the hands of the committee, and if the committee wants to rule otherwise, that is fine.

If no senator is rushing in with the first question, Mr. Scott, May I say I had the privilege of reading some of the remarks you made at the official opening ceremony for the \$25 million truck assembly plant expansion. You gave some indication in a general way of the effect thus far of the auto trade agreement. Would you care to make some comment now?

Mr. Karl Scott, President, Motor Vehicle Manufacturers Association: Mr. Chairman and honourable senators, it is pretty hard to divorce what we might have done in the absence of an automotive trade agreement from moves that ~~have been made that~~ have been attached more directly to the automotive trade agreement. I think the automotive industry in Canada generally, at the time the agreement was entered into, was at a point where the demand for automobiles was sufficient to require a certain amount of expansion.

Senator McCUTCHEON: In fact, the Canadian sales have expanded very rapidly.

Mr. SCOTT: That is correct, senator. The Canadian sales certainly have come up very importantly over the past few years. However, the advent of the automotive trade agreement gave us the opportunity to rationalize the production of automobiles and parts in Canada in a manner that we could never have accomplished without a trade agreement.

We had started, of course, before the signing of this actual agreement. We had started discussions as to what the future plans would be, partly based on the reports given by Dean Bladen at the time he conducted the Royal Commission inquiry into the automotive industry here in Canada.

There has been a continual chain of events that have influenced greatly the automotive companies, beginning with Dean Bladen's report.

One of the first moves that we made, when the trade agreement had been signed and we had made our commitments to Government, was to rationalize production of engines in Windsor. We were manufacturing approximately

200,000 engines of four different families there. This gave us short runs. We were manufacturing all the engines that we needed in Canadian cars. So we had to have quite a wide range of engines that we manufacture.

When the trade agreement went through, we decided that we would confine ourselves to the manufacture of one engine, one family of engines, the 289 cubic inch engine, and we completely renovated that plant, at a cost of some \$50 million for new machinery and equipment.

It gave us the opportunity to build the most modern engine plant that is in existence today, I suppose, because there has not been any one built since it. As soon as another one is built, it will be the second most modern.

We have increased our production of engines to 450,000 a year from the 200,000 that we manufactured previously. We are able to do this now with machinery and equipment that gives us the advantages of manufacturing according to an economy scale that permits us to take out of our life a short run type of manufacturing operation that we had there. I am using this as an illustration of what has been done. We have done the same thing with other manufacturing operations. They are not all completed yet but we are moving in the same direction on axles and hubs and drums and various other parts of the car that we manufacture in Windsor.

Senator LEONARD: Now that you are running the new engine plant, are the extra engines being shipped to the United States?

Mr. SCOTT: Yes, sir.

Senator McCUTCHEON: And the ones you previously made are now being imported?

Mr. SCOTT: All the cars which use the 289 c.i. engine, of course, use the engines produced in Canada. The surplus over our own requirements we ship to the United States and we in turn import from them all other automotive engines that we require.

Senator McCUTCHEON: What was your balance of trade between exports and imports last year?

Mr. SCOTT: I cannot quite answer that question, senator. First, because I would not want to rely on the figures that I have in mind. Secondly, I am rather reluctant to let my competitors know what we are doing.

The CHAIRMAN: The second reason you gave might have been the first one.

Senator McCUTCHEON: I would accept the second reason, except that I suspect your competitors know, anyway.

Mr. SCOTT: I would guess that they have a pretty fair idea. I think we have a pretty fair idea of what they are doing also.

Senator McCUTCHEON: I do not think there can be secrets.

Mr. SCOTT: I can say that our balance of trade has improved very importantly. In the imports and exports, you realize, senator, that this program has not yet been implemented fully and will not be until the end of the 1968 model year, rather than at the present time. You just cannot build facilities and turn around fast enough to implement it very quickly. I think that is probably one reason why they gave us the three years to reach the agreement. One of the big portions of the agreement in respect of balance of trade must be accomplished a year from next summer rather than at the present time.

Senator LEONARD: You said, Mr. Scott, that your balance of exports and imports has improved. You mean by that, that the deficit by buying more parts from the United States than you ship from Canada, that deficit has decreased?

Mr. SCOTT: Yes, sir, that has definitely decreased and must decrease under the terms of the agreement that we filed with the Canadian Government.

Senator MOLSON: When Mr. Scott says "engines", does he mean complete engines?

Mr. SCOTT: Yes.

Senator BEAUBIEN (Bedford): Would the complete engines, that you are turning out under your program, be competitive in price with engines of that kind that are turned out anywhere else?

Mr. SCOTT: In the field of engines we are pretty close to being competitive. It is pretty hard to measure the variances that you get in productivity. There is a great difference between the manufacture of an engine and the assembly of a car. The manufacture of an engine is primarily dependent upon machinery and equipment. In the assembly of a car it is still dependent very much upon the people who do it. You have a much greater personal labour content in your assembly work than you do in your manufacture work in the automotive industry.

Senator McCUTCHEON: You have made a very substantial investment in what I assume is a highly automated equipment in your engine plant in Windsor and you are producing more engines now of one type. What is the employment today as compared with what it was before?

Mr. SCOTT: Almost right on the nose, almost exactly the same, as far as numbers of people are concerned, although you really cannot take the engine plant in isolation, because in Windsor we have our foundry and machine shops and press plant and so on. We have a plant-wide bumping system under a union agreement, so that when you change your employment from one plant to another, it is not always the man in the particular plant that is affected who is changed.

Senator CROLL: What about numbers?

Mr. SCOTT: In numbers we are just about exactly even with what we had prior to the changeover of the engine plant.

An Hon. SENATOR: What about Oakville?

Mr. SCOTT: In Oakville we are much higher, because we are expanding there.

The CHAIRMAN: In fact, you are turning out twice as many engines?

Mr. SCOTT: We have roughly 53 employed in Windsor and we had that number in 1965, and we now have it in 1966.

Senator McCUTCHEON: At least in Windsor area, while the agreement may result in a very substantial increased capital investment, it has not resulted in a great increase in numbers?

Mr. SCOTT: Not of the employees that we have made it particularly for.

Senator McCUTCHEON: That is what I am talking about.

Mr. SCOTT: Some of the other parts of the automotive industry have increased employment, such as General Motors, who have put in a trim plant.

Senator CROLL: A question has been asked about Oakville.

Mr. SCOTT: In Oakville, our first move there was to rationalize our truck industry. We used to produce all lines of trucks at Oakville, right from the Econoline small van or truck, to the heavies and extra heavy trucks that we produced in the same plant as we produce passenger cars. We have built a new truck plant which is fully concerned with the manufacture of trucks now, and we manufacture only light and medium trucks there. In trucking we go up to the 750 size truck. Then we in turn export trucks, light and medium trucks, from that plant; and we import the Econoline and the heavies and the extra heavies. This plant gives us an opportunity to specialize. It affects our ability to produce more trucks, but it also definitely affects the quality of the trucks we produce because we are producing the same kind of trucks on our line.

Senator CROLL: The question I asked was how did it affect the manpower situation.

Mr. SCOTT: Our manpower has gone from 6,800 to something over 7,500. That of course includes our glass plant at Niagara Falls, but the two together, that is both hourly and salary, have grown that much from 1965 to 1966.

Senator McCUTCHEON: During the same period the sales of vehicles in Canada increased from 624,000 to 726,000, so that alone would represent increased manpower, would it not?

Mr. SCOTT: Not unless we increased our facilities, Senator. We were producing them at a maximum of overtime.

Senator McCUTCHEON: When did you decide to change your truck production facilities at Oakville?

Mr. SCOTT: Well, the change in truck production facilities was going on for a period of probably four years. I would say we started because we were running out of space. Actually at Oakville—I have been with the company here in Canada for a little over seven years and we have expanded the Oakville plant every year that I have been here. We used to operate a truck line that produced 16 trucks an hour on one shift; today we operate a truck line that produces 26 trucks an hour on two shifts.

Senator PEARSON: This is not altogether a result of the automotive pact?

Mr. SCOTT: It is a combination—largely the automotive pact plus a natural increase in demand for trucks. Actually we are capable of producing in that plant now if we work at full overtime on two shifts the number of trucks sold in Canada last year.

Senator LEONARD: Are you exporting any of those trucks from Oakville?

Mr. SCOTT: Yes.

Senator LEONARD: Is that something new?

Mr. SCOTT: We did not export any trucks prior to the trade agreement except a few trucks we would export to our subsidiaries in other Commonwealth countries. We did not export built-up trucks before that.

Senator PEARSON: I understand you are manufacturing one type of engine now in Windsor. Does that mean a considerable increase in the imports of other engines from the United States now?

Mr. SCOTT: Very definitely, but the ratio of exports to imports is still in favour of exports.

Senator PEARSON: That has changed the balance from what it used to be?

Mr. SCOTT: Yes. Taking the industry as a whole, our imports have increased according to the statistics we have. In 1963, for instance we imported \$575 million worth of automotive parts into Canada. In 1965 we imported \$868 million worth of parts. But our exports have gone from \$59 million in 1963 to \$181 million in 1965, and in the first three months of 1966 we were running at a rate of doubling the 1965 figure. This all deals with automotive parts, and I suppose Don Wood can tell you more about it. These are the figures from the Bureau of Statistics.

Senator McCUTCHEON: These are not your own company figures, then?

Mr. SCOTT: No, these are the figures for the industry.

Senator McDONALD: Did I understand your statement correctly when you said that at the motor building plant at Windsor you are now building 450,000 motors per year?

Mr. SCOTT: Yes.

Senator McDONALD: And you were building 200,000 per year prior to that and you have accomplished more than double the production with less than the addition of 100 men?

Mr. SCOTT: Well, you have to take the total Windsor employment into consideration. I don't know exactly what the relative number of employees in the engine plant is. We have had to renovate our complete foundry because that ~~survives~~ the engine plant. We have also had to renovate No. 2 plant down there and the general engine plant completely. We were manufacturing a great many different parts in that plant. We are trying to get down now to a few parts.

Senator McDONALD: I understand that in Windsor you have not only the automotive plant, but you have the foundry or workshop where you are making axles and drums and things of that kind. You have more than doubled your production of motors there?

Mr. SCOTT: Yes.

Senator McDONALD: You have accomplished this with less than the addition of 100 men?

Mr. SCOTT: Well—

Senator McDONALD: Does not this prove that it is much better for your plant in Windsor to build one type of motor than to build 20 types?

Mr. SCOTT: Yes, this is part of our economy's scale. This is what happens when you can take advantage of the economy scale of North American industry rather than confine yourself purely to Canadian industry.

Senator McDONALD: But you wouldn't have this scale if you didn't have access to a market larger than that available in Canada?

Mr. SCOTT: No. We would not know what to do with the surplus products. We sell a total of 200,000 or 215,000 units a year, but we would be manufacturing a terrific surplus and I don't know what we could do with it.

Senator McDONALD: Is the 289 engine the most popular size in Canada?

Mr. SCOTT: No, I wouldn't say so. It is the most popular eight-cylinder, yes.

Senator McDONALD: What is the relative popularity of that versus a six-cylinder?

Mr. SCOTT: I don't know.

Senator McDONALD: But it is the most possible eight?

Mr. SCOTT: Yes.

Senator LEONARD: What cars does this engine go into?

Mr. SCOTT: Anything from the small compact cars up. You can use a 289—eight-cylinder in your intermediate cars and in most of the senior products.

Senator LEONARD: Are you exporting any assembled cars to the United States?

Mr. SCOTT: Yes.

Senator LEONARD: One model, or more than one?

Mr. SCOTT: More than one. We have been able to rationalize our production and these are the figures that are available. We are exporting one of the compact cars, the Falcon, and we also export one line of Ford Cars.

Senator LEONARD: Are the numbers substantial?

Mr. SCOTT: Compared to what we exported previously they are extremely substantial.

Senator McCUTCHEON: Of course they are. When you go up from zero they are bound to be substantial.

Mr. SCOTT: That is right. However I do not think we have reached the ultimate we would like to reach under the agreement.

Senator SMITH (*Queens-Shelburne*): In manufacturing these engines, do you import some parts for them or do you manufacture them entirely from parts which you manufacture yourselves?

Mr. SCOTT: No, not all of them. We never have.

Senator SMITH (*Queens-Shelburne*): Where do you get the parts you don't have yourselves?

Mr. SCOTT: We buy them from the United States. Of course we are bound under our agreement with the Canadian Government to maintain a certain percentage of Canadian value added in which goes up every year, and we have been able to accomplish that.

Senator McCUTCHEON: What progress are you making towards the \$74.2 million you are bound to reach by July 31, 1968?

Mr. SCOTT: I can only say, senator, we are making progress on schedule. We have no concern that we will not be able to meet it.

Senator McCUTCHEON: Have you acquired any parts manufacturers in Canada in the last two years?

Mr. SCOTT: Have we "acquired" any?

Senator McCUTCHEON: Yes, purchased any.

Mr. SCOTT: No, we have not.

Senator McCUTCHEON: No companies engaged in the automotive parts manufacture?

Mr. SCOTT: No, sir, we have not.

Senator LEONARD: Are you at the 60 per cent level of Canadian content?

The CHAIRMAN: Do you mean "value added"?

Senator LEONARD: Value added, yes.

Mr. SCOTT: We are complying with the agreement with the Government. We are at the 60 per cent level as far as the 1964 production was concerned and also at the 60 per cent level on passenger cars on the increased market in Canada.

Senator McCUTCHEON: And, in addition, you have to add an arbitrary \$74 million.

Mr. SCOTT: \$74½ million I believe was our share of the two hundred and sixty. The normal growth in the automotive industry gives us a task just about as big as that itself.

Senator MOLSON: Is this 289 motor for the trucks you manufacture?

Mr. SCOTT: Yes, we use the 289 in a number of trucks we manufacture. A person ordering a car or truck can order it with a 6 or 8 cylinder and the 289 or higher engine, but that is a very popular engine, the 289.

Senator BEAUBIEN (*Bedford*): To my mind, a benefit that would come from this agreement would be if the cost of a car made in Canada were to come down to about the same level as in the States. In the case of trucks, how do your costs compare with the same truck made in the States?

Mr. SCOTT: They are not down to that level yet. There is a variance in productivity in Canada which has been confirmed recently by any study I have seen made by independent parties and the Government. We try to measure it as closely as we can. We set objectives for ourselves. There will always be a variance of cost of cars in Canada versus the United States, probably as long as we have a variance in the value of the dollar and in our tax structure, which is quite important. The actual variance in cost today of a vehicle manufactured in Canada, the sale price of it, is somewhat under 6 per cent when compared to the average vehicle in the United States, if you take into consideration the value of the dollar and the difference in tax structure.

Senator McCUTCHEON: You are talking about the factory sales price, ignoring sales taxes, freight, and so on?

Mr. SCOTT: Yes.

Senator McCUTCHEON: How much would your costs be reduced if you did not pay 11 per cent sales tax on production machinery?

Mr. SCOTT: I cannot tell you how much they would be reduced. It would be rather substantial. The 11 per cent sales tax and the duty on the machinery and equipment we have had to import has been a very substantial cost to us in the moves we have made to expand production in Canada. It is a hurdle which is pretty hard to get around.

Senator McCUTCHEON: What about your sales of cars in Canada manufactured by your U.K. subsidiary, have they been going up or coming down?

Mr. SCOTT: They have gone up slightly because industry has gone up—from 8 or 9 per cent to around 11 per cent at the present time. We have made efforts to improve sales of cars, particularly the small Anglia, because most sales are sales you would not get otherwise. They are not competing really with the North American-made cars but with other imported cars, and we offer them for sale and they have gone up somewhat, but it still is not a very important part of the market. I believe that in total we run around three-tenths to four-tenths of 1 per cent of the total industry.

Senator McCUTCHEON: What are you planning to do with your plant at Talbotville?

Mr. SCOTT: It will be an assembly plant.

Senator McCUTCHEON: It will be an assembly plant for motor cars or trucks?

Mr. SCOTT: Motor cars.

Senator McCUTCHEON: When were your plans made for that?

Mr. SCOTT: The plans for building the plant at Talbotville, at that particular location, were made over a period of six or seven months' negotiations we had with the parent company. The plans for building an assembly plant were made some time before that.

Senator McCUTCHEON: An assembly plant?

Mr. SCOTT: Yes.

Senator McCUTCHEON: Some place in Canada?

Mr. SCOTT: No, some place in North America. This gave us the opportunity to build it in Canada.

Senator LEONARD: When you say "this," what do you mean?

Mr. SCOTT: The automotive agreement gave us the opportunity to place the plant in Canada. One of the first things we did was to hire a Canadian architect, and the price of tax or duty we had to pay on the imported drawings that had already been made for a North American plant was substantial. These plans had been drafted and a lot of work had been done prior to the time it was decided to build the plant in Canada, so we had to import the drawings.

Senator KINLEY: Would you like to say anything about your importations from your European factories—Britain, for instance? I mean, your importation of parts into Canada of blocks and this sort of thing from these countries?

Mr. SCOTT: We import from the U.K. only built-up cars, no parts whatsoever.

Senator KINLEY: I am speaking about imports from European countries, Britain and any other country where you have a plant.

Mr. SCOTT: To the best of my knowledge, we do not import parts from Britain or any other European country. We just import built-up cars. There is no duty on a built-up car.

Senator KINLEY: Would you call a block a built-up part?

Mr. SCOTT: No, a total car on wheels. That is the only thing we import.

Senator KINLEY: Are your total imports from European factories large?

Mr. SCOTT: No, very small, comparatively speaking.

Senator MOLSON: Mr. Chairman, may I ask Mr. Scott if there is any prospect of a substantially larger quantity of machinery used in the production of automobiles being manufactured in Canada?

Mr. SCOTT: I think that eventually there will be a specialization in Canada in particular pieces of machinery and equipment, so there will be an opportunity to use more Canadian-built equipment; but I think the manufacturers of machinery must specialize in order that they can afford to produce the kind of machines we need rather than to produce the whole line of machines. I am not too well acquainted with it. I know that in the implementation of our plans there are a lot of machines that just have never been manufactured in Canada that we have to use. Now, whether or not the volume would justify specialization by machine tool manufacturers in Canada is a pretty hard question for me to answer, and I am not well enough acquainted with it.

Senator MOLSON: In your purchasing policy, have you got anything laid down as to the sources from which you purchase? That is, whether there is any direction towards Canadian manufacturers, or is it substantially all from the parent company in the United States?

Mr. SCOTT: No, we purchase a substantial amount of parts from the Canadian manufacturers, and Canadian manufacturers produce substantial numbers of parts that are produced by our parent company in the United States. The basic purchasing policy in our company is the same as in any commercial organization, I think. Your basic policy is to purchase at a competitive price and fortunately many of the Canadian suppliers are becoming or have become very competitive on the North American basis.

Senator McCUTCHEON: Where is your procurement office now?

Mr. SCOTT: Our procurement for production parts is primarily down in Dearborn.

Senator McCUTCHEON: That is a change, is it not?

Mr. SCOTT: That is right, that is a change. It is a change that is a natural outgrowth of the rationalization of the North American industry. This is the way that we sold a lot more Canadian parts because we signed an agreement with the Canadian Government. This agreement requires us to do certain things, and one of the things we have to do is to increase the export of parts, and we have only one customer to which we can increase that export. We have just one customer, and that is Ford of the U.S. General Motors has just one customer, and Chrysler has just one. So that your production parts that are purchased in Canada must be purchased, or certainly should be purchased, by one purchasing organization. All non-production parts are still purchased here.

Senator McCUTCHEON: Let me ask you a question, Mr. Scott, and it may be a little hypothetical. No doubt you are looking forward to July, 1968?

The CHAIRMAN: August 31, is it not?

Senator McCUTCHEON: July 31 is the date in his letter which is in front of me.

Now, you have rationalized your engine production, you have rationalized your truck production, and while you have not touched on it to the same extent I assume there has been what will be a continuing rationalization of your car production.

Mr. SCOTT: That is correct. It is going on right now.

Senator McCUTCHEON: If the agreement is denounced at the end of 1968 what position would you be in in Canada?

Mr. SCOTT: I would hate to think, sir.

Senator McCUTCHEON: That is what I thought.

Mr. SCOTT: I would just hate to think. It is not just only the position that the company I represent would be in, but the position of the automotive industry in total.

The CHAIRMAN: In total? Do you mean North America?

Mr. SCOTT: Yes, even North America. It would affect it very importantly because if the duties went back on and we did not have the opportunity to exchange facilities I do not know what we would do. We would have to close down plants and they would have to rebuild them in the United States, I suppose.

Senator McCUTCHEON: What you are really saying is that one result of this agreement is that so far as Canada is concerned we are committed irrevocably to North American rationalization?

Mr. SCOTT: There is no question about it.

Senator CROLL: Mr. Scott, in answer to a question put to you by Senator Beaubien—he asked you about the price differential, and your answer was that there was a difference in productivity. You also said that there was the matter of—

Mr. SCOTT: The value of the dollar.

Senator CROLL: Yes. I recall some DBS figures placed on the record of the House of Commons indicating that our general productivity in Canada was as good as that of the United States.

Mr. SCOTT: That is a hard thing to measure, but it is certainly not borne out by the report of the Economic Council of Canada. The indices that they use to measure productivity indicates that we have quite a long way to go in Canada. I do not think that that is any indictment of Canadian industry. We are just in the automotive end of it—at least, we are operating under a different set of rules today, and it takes a period of time to change over from a job type industry to an industry that enjoys the economy of scale. It is a different operation, and it takes a little time to turn around. Certainly, the productivity should improve greatly in Canada as the agreement is implemented further.

Senator BEAUBIEN (Bedford): To go back to a question asked by Senator McCutcheon about the Ford Company, would not Ford in the United States be just as badly off as Ford of Canada if the trade agreement were to be terminated in 1968?

Mr. SCOTT: It would have a serious impact on Ford of the United States.

Senator BEAUBIEN (Bedford): You would have to rebuild the plants down there. You would not be any happier down there, would you?

Mr. SCOTT: For the last year and a half, or for the time the agreement has been in effect, we have been operating on a North American basis. To change that around and set up barriers between Canada and the United States again, and to revert to what we had before the automotive trade agreement, would have a serious impact on both the Canadian and American industries.

Senator McCUTCHEON: I am not anticipating this is going to happen, but I think you would agree with me that it would have a far more serious effect on the Canadian industry than on the United States industry?

Mr. SCOTT: Well, because the United States industry is so much larger.

Senator McCUTCHEON: Yes, that is correct.

Mr. SCOTT: Of course, relatively speaking, it would be greater.

Senator LEONARD: Mr. Scott, what is the effect of this agreement on the changes that are taking place in your exports to other countries than the United States?

Mr. SCOTT: Speaking as an industry, or as Ford?

Senator LEONARD: I am speaking just of the Ford Company.

Mr. SCOTT: It has not had too great an impact on our company.

Senator McCUTCHEON: Has it industrywise?

Mr. SCOTT: I believe so. One of the other members of our Motor Vehicle Manufacturers' Association has increased its exports to other countries very substantially.

Senator LEONARD: I suppose one reason is that you may have your own plants in most other countries where there is a substantial market, and it would have a greater effect on the company that did not have those facilities?

Mr. SCOTT: That is right, sir. There are not too many North American type cars used in foreign countries. The market is relatively small. In the plants that Ford of Canada owns in South Africa, Australia and New Zealand, and so on, we do sell North American type vehicles, and it does give you an opportunity for a certain amount of exports. I do not think that has been changed, however, by the trade agreement at all. That has always been there. Over a period of years that has been decreasing quite importantly because of barriers put up by these countries. For instance, we manufacture the Falcon in Australia with some 93 per cent Australian content—we have to—but the price of a Falcon in Australia has no resemblance to the price of one in North America. It is extremely high, of course, because their market is only about half the size of ours, and yet they have very high restrictions on imports.

Senator BEAUBIEN (*Bedford*): Mr. Scott, when you get to producing the cars you turn out here in a greater volume then surely that will help your export position, or will help your chances of export?

Mr. SCOTT: I did not get the question—

Senator BEAUBIEN (*Bedford*): For instance, I am referring to the trucks that you make here. As you produce them in greater volume the unit costs must come down and, therefore, that should help you export in the years to come?

Mr. SCOTT: Yes, we are hopeful that over a period of years, if you take out the elements over which we have no control, at some time in the future there will be very little difference between manufacturing a car in Canada and in the United States. This is the basic purpose of the trade agreement—to rationalize the industry to the point where we can take advantage of the economies of scale that come from the North American market. Some of these other things are ancillary benefits—such as an improvement in the balance of trade. I believe that is more of an ancillary benefit that comes from the rationalization of the industry which is geared to cutting costs in the manufacture of cars.

Senator McCUTCHEON: The imbalance of trade overall in the automotive business increased very materially in 1965 as against 1964. Did I understand you to say that your imbalance had improved?

Mr. SCOTT: No, I am talking about the industry. Those are D.B.S. figures which I quoted.

Senator McCUTCHEON: They are for parts?

Mr. SCOTT: Yes, they are for parts. As to built up cars, of course, I know of no built up cars or trucks that were exported to the United States prior to the trade agreement.

Senator McCUTCHEON: But the imbalance of trade with the United States on parts and built up cars and trucks worsened in 1965 as compared to 1964 by nearly \$200 million. Now, I thought you said that the Ford Motor Company's imbalance had improved, and I wondered if I had heard you correctly.

Mr. SCOTT: Taking in total the cars and parts that we export today and the ones that we import, we have improved it; and every automotive company has

to improve it or we can never carry out the agreement we have with the Canadian Government. It has to be done; that is right in the order.

Senator McCUTCHEON: Then your competitors have done a very poor job up to date?

Mr. SCOTT: I would not say that, senator, with all respect. This agreement is not implemented yet. One of our principal competitors, the largest manufacturer, has not started to export. They published figures that they expect to export 75,000 cars next year, but they were not exporting them in 1965, probably due to the fact that they have problems in their turn around that we may not have had.

Senator McCUTCHEON: You say next year. Do you mean the 1967 model?

Mr. SCOTT: The 1967 model that begins next fall.

Senator CROLL: But the figures that Senator McCutcheon gave you were figures in 1964-65, of \$200 million.

Mr. SCOTT: From 1964 to 1965 imports of automotive parts increased about \$200 million.

Senator CROLL: That is right, but you are now talking of more recent dates. I thought you talked to us about three months of 1966. I think you said "doubling figures", in your 1966 exports.

Mr. SCOTT: The exports from Canada to the United States went from \$181 million in 1965 to \$73 million in the first three months of 1966.

Senator CROLL: Yes, so the balance of payments improves.

Senator McCUTCHEON: It improves if we know what the imports are.

Senator CROLL: Yes.

Senator LEONARD: Mr. Scott knows the figures for his own company. He said the reduction of the deficit was substantial as far as the Ford Motor Company is concerned.

Mr. SCOTT: As far as the Ford Company is concerned. If we had not had a trade agreement and in some way we had not been able to enjoy the increase in demand that we have had over the last two or three years in the automotive industry, I don't know what our imbalance would have been by this time; it would have been very much greater than it is today. On vehicle export, as far as the units are concerned, in 1963 we exported 23,000 cars—this is as an industry—and in the first five months of 1966 we exported 100,000. That gives you a rough idea.

Senator CROLL: Mr. Scott, the estimate made by a knowledgeable member of the House of Commons was that if the agreement had not been in force there would have been an additional \$200 million on the balance of payments.

Mr. SCOTT: We have never attempted to try to figure it out. It would have been—

The CHAIRMAN: You did not finish your sentence, Mr. Scott.

Mr. SCOTT: As far as I know, in the automotive industry—Mr. Dykes, our executive secretary is here. Have you ever tried to figure out what it would have been? I don't believe so.

Senator McCUTCHEON: Leave that to politicians.

Mr. SCOTT: Yes.

The CHAIRMAN: There will always be some of those, senator.

Senator McCUTCHEON: I suppose so.

The CHAIRMAN: Any other questions of Mr. Scott?

Senator CROLL: I am going to ask a question. If you feel you do not know the answer, Mr. Scott, do not answer. Assuming for the moment that the

American safety standards come into effect, and they do say it will be by January 1, how will that affect us?

Mr. SCOTT: Well, I am very hopeful that the work that is currently being done here in Ottawa on the establishment of safety standards for Canadian vehicles will be exactly the same as they are in the United States. Any deviation from that would be just contrary to the automotive agreement itself.

Senator McCUTCHEON: You could not rationalize your production.

Mr. SCOTT: You could not do it. I am sure the governments are doing that, they are getting together to establish a set of safety standards and reduce them to writing so that there will not be any deviation between the Canadian standards and the American standards.

Senator CROLL: Are you at liberty, Mr. Scott, to indicate what is in mind at the moment?

Mr. SCOTT: I could not do that. It would have to come, I believe, from Government rather from the automotive industry. Some things have been published. It was just last week, Monday and Tuesday, that there was a rather important meeting here bringing together the automotive people and the transportation people from all of the provinces and from the federal Government and representatives of the automotive companies and various other parties that are interested in it. They had a two day session on it, and I understand they are making progress toward putting into writing a set of safety standards that will not be different from the standards established in the United States.

Senator PEARSON: Are there any plans to rationalize the drivers?

Mr. SCOTT: I wish we could choose the right driver to rationalize them to.

The CHAIRMAN: Thank you Mr. Scott.

Mr. D. S. Wood, Vice-President of the Automotive Parts Manufacturers Association, is a specialist in the parts manufacturing end of the business. He is here and if there are any questions you would like to ask him, he will deal with them now.

Senator BENIDICKSON: What company does Mr. Wood represent?

The CHAIRMAN: Mr. Wood is Vice-President of the Automotive Parts Manufacturers Association.

Senator McCUTCHEON: But is he himself engaged in the business?

D. S. Wood, Vice-President, Automotive Parts Manufacturers Association: I do not represent a single company; I represent the parts manufacturing industry as a whole.

Senator LEONARD: I have a general question on the automotive parts industry. What is the effect of the agreement?

Mr. WOOD: The first feature of the agreement was that it forced us to become much more competitive than we had been before, because now we are going to have to meet United States' prices for parts without any duty or any hindrance to their importation other than the agreements that the automobile companies had signed with the Government. Therefore we had to modernize our plants completely and to reach standards of production which some of our plants had not reached. So the matter of re-equipment of our plants came very strongly into the picture.

Senator PEARSON: Was money readily available for improving your plants?

Mr. WOOD: I have had no indication that it has not been sufficiently available, anyway. There is assistance in some degree through the Financial Assistance Board, and also privately.

Senator McCUTCHEON: How much money have the parts manufacturers borrowed from the Government?

Mr. WOOD: From the Financial Assistance Board, I think \$20 million was set aside; and I will have to speak from memory, I believe about \$16 million was consumed.

Senator McCUTCHEON: How many members have you?

Mr. WOOD: Approximately 200 member plants making original equipment.

Senator McCUTCHEON: That is individual companies?

Mr. WOOD: Individual plants. There would be about 180 individual companies.

Senator McCUTCHEON: About 180 individual companies?

Mr. WOOD: Yes.

Senator McCUTCHEON: How many of those have changed hands in the last 18 months?

Mr. WOOD: When you say changed hands—

Senator McCUTCHEON: Sold out?

Mr. WOOD: Sold out—Canadian takeovers, particularly, about eight.

Senator McCUTCHEON: Can you tell us who they were?

Mr. WOOD: Ontario Steel Products was acquired by Rockwell Standard.

Senator LEONARD: Did that not happen before the automotive agreement?

Mr. WOOD: Yes. You mean since January 1965?

Senator McCUTCHEON: Yes.

Mr. WOOD: I do not think I can recall as many as even three or four.

Senator MOLSON: What about Walker?

Mr. WOOD: Walker was acquired before the agreement.

Senator LEONARD: Coulter?

Mr. WOOD: Coulter was not acquired by an American company, but by Noranda. There may be two or three. I don't want to leave the impression that there were none, but I don't recall any of any consequence.

The CHAIRMAN: You were addressing yourself to a U.S. takeover?

Mr. WOOD: Yes, I was.

Senator McCUTCHEON: Or a takeover by a Canadian manufacturer?

Mr. WOOD: That would be the same thing.

Senator CROLL: Approximately how many people are employed in the parts industry?

Mr. WOOD: The latest count which was taken this year by ourselves, that is, by our association, was approximately 50,000 people, excluding the captive plants like McKinnon Industries and Walker Metal.

Senator CROLL: What do you anticipate that will arrive to by 1968?

Mr. WOOD: That will depend upon the direction that the agreement goes. If we produce more parts in Canada, as we could well do under the agreement—but this will depend upon buying policy—then by 1968 that could step up another 20 per cent.

Senator McCUTCHEON: How many members of your association have gone out of business since January 1965 or have closed plants?

Mr. WOOD: Possibly less than five, because of the agreement, anyway.

Senator McCUTCHEON: Less than five, you say, because of the agreement?

Mr. WOOD: Yes. I do not know of any others, anyway. There are some who are threatening.

Senator LEONARD: What is the effect over all in the employment in the industry?

Mr. WOOD: About four years ago it was 30,000, now it is 50,000.

Senator McCUTCHEON: But during that time sales of cars in Canada have gone up very materially.

Mr. WOOD: Yes. I would not attribute that by any means entirely to the agreement.

Senator McCUTCHEON: In other words, employment would have gone up in any event?

Mr. WOOD: We would have reflected the growth in the industry. They would have gone up anyway, because production in the industry went up.

Senator McCUTCHEON: At one time last year we heard about the adverse effect this had on the English Tool and Machinery Company. Have you any information on that?

Mr. WOOD: Their contract was primarily for steering gears with one source in Canada.

Senator McCUTCHEON: Which source?

Mr. WOOD: Chrysler.

Senator McCUTCHEON: What happened?

Mr. WOOD: I understand that Chrysler, in the process of rationalization, which affected also their Australian orders, reduced the orders on the Canadian plant and took some of the orders back into their own captive plant in the United States and reduced the total quantity on the Canadian plant, which they could have done at any time.

Senator McCUTCHEON: They could have done it at any time, I appreciate that. You indicated that, over all, I take it, your position is that the agreement has worked in favour of the industry, over all? Has it been pretty spotty? Have there been some pretty difficult situations arise?

Mr. WOOD: Yes, there have been. I think it is only fair for you to know. We are in what might be called the moment of truth this year. It depends upon what business is placed with Canadian sources for the 1968 model car. We will not know to what extent we are doing so until about the end of this year.

Senator McCUTCHEON: When they are starting to place orders.

Mr. WOOD: They are starting to place them, as of now, for 1968 model cars. This will carry through until roughly the end of this year. As to the rough spots, one of the major rough spots has been in one segment, the stamping industry. The metal stamper, many of which are rather small companies, many employing less than 100 people and some employing less than 50 people, find that their product, which they have supplied in the past from Canadian sources, is now to be sourced in the United States.

Senator McCUTCHEON: What is happening to the trim manufacturers?

Mr. WOOD: I have no complaints on any trim manufacturer being put out of business, or anything close to it.

On the other side, the die casting industry, which also gets into decorative work as well as hardware, is working at capacity. Plants have expanded, and in one case a new plant which came in, completely modern, had to increase its capacity before it opened its doors, and might have doubled it then.

Senator McCUTCHEON: You said that there are a limited number, I think you said three or four, takeovers of Canadian parts manufacturers by United States firms, since the agreement. Has there been any tendency on the part of

Canadian motor vehicle manufacturers to expand their existing parts manufacturing facilities or to create new parts manufacturing facilities, without taking anybody over, just physically to go into that business, to a greater extent than they have in the past?

Mr. Wood: That would have been a question better answered by Mr. Scott, but we do have situations where, as I mentioned, Walker Metal, that was simply a takeover of an existing industry which did not necessarily take anything away from Canadian industry.

Senator McCutcheon: I wonder if Mr. Scott would like to answer the question.

Mr. Scott: We have had some industries come to Canada that we did not have before. For instance, frames will be manufactured in Canada for the first time.

Senator McCutcheon: By whom?

Mr. Scott: One is an expansion of Hayes Steel, who are putting up a frame plant themselves, and the other one is Budd, that came into Kitchener and built a new plant there.

Senator McCutcheon: What about the motor manufacturers themselves? Are they moving into this field? Are they integrating back?

Mr. Scott: Yes, sir. We are taking advantage of the opportunity to specialize. I can answer things like this better by illustrating them. In our assembly plant at Oakville we had operations that were completely foreign to any assembly plant in the United States. That is, we would have to buy our doors, just buy the sheet metal for them and put them together in the assembly plant. We call this subassemblies. In the United States those things are done in the stamping plants themselves. Obviously, we have to get rid of these subassemblies because they make us completely non-competitive. But these things will be replaced with other sourcing that we have been able to do with good efficient Canadian producers. So we have not had any difficulty in maintaining a proper rate of growth in the purchases that we made from Canadian suppliers.

Senator McCutcheon: I am not suggesting that, Mr. Scott. What I am asking really is, are you doing more of this manufacturing, or are your competitors doing more? In other words, are you moving into the parts business?

Mr. Scott: Not particularly, that I know of. General Motors were in the trim business and they have expanded it with a new plant. If you took the quantity of parts that we manufacture today, there are considerably less parts that we manufacture, because we have been specializing. A great many of these have been sourced to Canadian suppliers. For instance, we used to manufacture 200 stampings in one plant at Windsor. We now have only one 500-ton press line there and every other stamping has been resourced to Canadian suppliers.

Senator Croll: You told us earlier, Mr. Scott, that you were now looking for many of your parts in the United States rather than in Canada.

Mr. Scott: We look, of course, to the vendor who can supply competitively, as Mr. Wood has said. But our purchases, including our parent company and ourselves, from Canadian suppliers has increased quite importantly.

Senator Croll: Mr. Wood, I think you touched on it. I think that Bladen, in the Royal Commission report, recommended that the exports manufacturers, that is, parts manufacturers who did a lot of exporting, should be assisted by way of an adjustment assistance fund, in which I think they laid aside some \$20 million to begin with.

Mr. Wood: That is right.

Senator CROLL: To be available at 6 per cent on a 20-year repayment. I think you told us that about \$15 million of it had already been picked up.

Mr. WOOD: I used a figure of \$16 million at the time. The balance may be under discussion right now, as far as that goes.

Senator CROLL: At the same time, provision was made for a transitory assistance fund, for workers who were replaced in the industry and not easily placed again?

Mr. WOOD: Yes.

Senator CROLL: So that some assistance has been extended to the parts manufacturers as well as to the workers, although up to the moment you indicate that the business and employment in the industry had increased rather than decreased.

Mr. WOOD: That is correct.

Senator CROLL: If that is the case the point that strikes me is why did those people need those assistance loans if things are better rather than worse?

Mr. WOOD: This comes back to our competitive position. The competitor is the parts manufacturer in the United States. He does not pay a duty on machinery; he does not pay a sales tax of 11 per cent and he gets his money at about half the cost of money in Canada.

Senator CROLL: At 6 per cent?

Mr. WOOD: He gets it from his own private sources and sometimes from within. That is where expansion so often develops—from within. I know some of our own parts manufacturers who were paying 8 or 9 per cent for money and the difference between this and 6 per cent is very important. With those features the parts manufacturer was not on the same basis, as his competitor in the States in the same business does not have to pay duty and sales tax on machinery, and this is a very vital factor in keeping him noncompetitive.

Senator CROLL: The loans of \$15 million have been very helpful in keeping the industry going?

Mr. WOOD: That is right.

Senator McCUTCHEON: Coupled with the fact that your automated plants here are still preparing and as you say yourself the moment of truth will not arrive until later this year—

Mr. WOOD: That is right.

Senator McCUTCHEON: The ordinary commercial lender may be a little chary about making loans?

Mr. WOOD: I would not be surprised because the parts manufacturer is in a secondary position. He supplies parts when the customer decides to buy them.

The CHAIRMAN: Any further questions of Mr. Wood? Thank you, Mr. Wood.

Honourable senators, this represents the evidence available at the moment. I did make further inquiries and these were the only witnesses available at this time. In dealing with this matter there are two positions open to the committee: We can decide that this is an agreement which should be approved and make a report recommending to the Senate that it be approved, or we can decide that it should not be approved.

Senator McCUTCHEON: Did I understand you to say that there were no other witnesses available?

The CHAIRMAN: Not at this time.

Senator McCUTCHEON: But they could be if they were invited?

The CHAIRMAN: Not at this time. I made some inquiries about this.

Senator McCUTCHEON: So did I.

THE CHAIRMAN: As between Mr. Scott and Mr. Togden I chose Mr. Scott because he is the President of the Motor Vehicle Manufacturers Association.

Senator McCUTCHEON: How about Mr. Walker? I understood that Mr. Scott said he was not speaking for the industry apart from his own company and for this reason I thought it would be interesting to hear Mr. Walker.

THE CHAIRMAN: Well, although this agreement is already in operation, the minister has indicated that there is some urgency about this.

Senator CROLL: Well, we have had the President of the Motor Vehicle Manufacturers Association and we have had Mr. Wood, who is the Vice-President of the Automotive Parts Manufacturers Association. I am sure the story in general is the same as we have heard it from them. Perhaps some details could be filled in, but it would not vary to that extent.

Senator McCUTCHEON: I am not reflecting in any way on Mr. Wood at all, but he is not a manufacturer. He is what I would call a trade secretary.

Senator CROLL: No, Mr. Wood is in a little more precarious position because he holds his position as a result of not displeasing all the parts people. After all he is Executive Vice-President of the Automotive Parts Manufacturers Association.

Senator McCUTCHEON: I think Mr. Loveridge would have given different evidence and not quite as optimistic as Mr. Wood's.

Senator CROLL: Senator McCutcheon knows this business and I think everybody around the table knows it too. In a situation where you have a manufacturer who has one great big customer and something happens, as I have seen it happen in the textile industry and as it has happened many times around Windsor—the big customer or manufacturer may decide to make a change from time to time and that creates a problem for a time. I have seen that happen to Ingersoll, and if they limit themselves to one major purchaser they are in danger.

THE CHAIRMAN: I understand that Ingersoll have gone out and secured contracts in other areas from the United States, and they have hoisted themselves by their own effort to the extent that they may have been hurt by this trade agreement.

I am ready for a motion to recommend to the Senate that they approve the trade agreement.

Senator CROLL: I so move.

THE CHAIRMAN: Those in favour? Those opposed?

The motion is carried.

The committee concluded its consideration of the Agreement.

APPENDIX "A"

Minister of Industry—Ministre de l'Industrie

OTTAWA, July 11, 1966.

The Honourable Salter A. Hayden,
Chairman,
Standing Committee on Banking and Commerce,
The Senate,
Ottawa, Ontario.

Dear Senator Hayden:

I am sending you herewith lists of new plants and expansions in the automotive industry for 1964, 1965, and the first six months of 1966.

You will note that the list includes information on companies obtained from public sources, but excludes information obtained confidentially. You will understand that it would not be in the public interest or in the interest of the Department of Industry to publish confidential information.

The total of new plants and expansions for 1964 and 1965 (including 12 units in 1964 and 29 units in 1965 which do not appear on the lists to be published) is 208, as compared to 205 which I cited during my statement in the House of Commons. Three additional expansions in this period have come to the attention of the Department since I made this statement. A total of 24 expansions are listed for 1966, making a total to date of 232.

I also agreed to supply your Committee with a list of acquisitions of Canadian automotive companies by United States interests and I enclose a list of those acquisitions which have come to the attention of the Department. As I suggested to the Committee, this list may not be indicative of the current situation as the Department is not required to obtain this information.

Yours sincerely,

Original Signed by
C. M. DRURY.

c.c. Mr. Frank A. Jackson, Clerk, Standing Committee on Banking and Commerce, The Senate, Ottawa.

ACQUISITION OF CANADIAN AUTOMOTIVE COMPANIES BY UNITED STATES INTERESTS

Year: 1964

<i>Company Acquired</i>	<i>Buyer of Control</i>	<i>Buyer's Headquarters</i>
Chatham Plating Co., Chatham, Ontario.	Kysor Industrial Corp.	Cadillac, Mich.
Guelph Stove Co., Guelph, Ontario.	Studebaker Corp.	South Bend, Ind.
Kralinator Filters Ltd., Preston, Ont.	Sheller Manufacturing Corp.	Detroit, Mich.
Sales, A. J. Co., Ridgetown, Ontario.	Kysor Industrial Corp.	Cadillac, Mich.
Walker Metal Products Ltd., Windsor, Ont.	Chrysler Corp.	Detroit, Mich.
Young Spring & Wire Corp. of Canada Limited, Windsor, Ontario.	Chrysler Corp.	Detroit, Mich.

Year: 1965—We have no record of takeovers of Canadian automotive companies by United States interests in 1965.

EXPANSION OF THE AUTOMOTIVE INDUSTRY IN CANADA

— 1966 —

(The attached list:

includes—information on companies obtained
from public sources.does not include—those companies whose plans
are considered confidential.)

CODE—Status of Expansion

C—Completed

P—In process

Motor Vehicles Division
 Mechanical Transport Branch
 Department of Industry.

EXPANSION OF THE AUTOMOTIVE INDUSTRY IN CANADA—1966

<i>Name—Location</i>	<i>Products</i>	<i>Description of Investment</i>	<i>Status of Expansion</i>
American Motors (Canada) Ltd. Brampton, Ontario.	Automobiles	New warehouse and plant facilities	P
Barnes, Wallace Co. Ltd., The Burlington, Ontario.	Valve springs	Expansion	P
Brascope Products Ltd., Toronto, Ontario.	Screw machine products and tube fittings	New plant	P
Canadian Industries Ltd., Toronto, Ontario.		Expansion (Tenders called)	P
Canadian Kenworth Limited, Burnaby, B.C.	Trucks	Expansion (To boost plant area by 75%)	C
Canadian Timken (Div. of The Timkin Roller Bearing Co.) St. Thomas, Ontario.	Bearings and metal products for automotive industry	Expansion (Mfg. and office)	P
Chrysler Canada Limited Windsor, Ontario.	Passenger cars and trucks	Expansion (360,000 sq. ft.)	P
Chrysler Canada Limited Ajax, Ontario.	Automotive trim plant	Expansion (116,000 sq. ft.)	P
Columbus McKinnon Ltd., St. Catharines, Ontario.	Chains, stampings, wire products, etc.	New plant and office (140,000 sq. ft.)	P
Eaton Automotive Canada Ltd., London, Ontario.	Automotive parts and accessories	Expansion (34,000 sq. ft. mfg. space 20,000 sq. ft. warehouse)	P
Essex Wire Corporation, St. Thomas, Ontario.	Coils, cables	Expansion (167,000 sq. ft.)	P
Equipement Universel Napier-ville Inc., Napierville, Quebec.	Bus assembly	New plant (35,000 sq. ft.)	C

STANDING COMMITTEE

<i>Name—Location</i>	<i>Products</i>	<i>Description of Investment</i>	<i>Status of Expansion</i>
Gabriel of Canada Ltd., Toronto, Ontario.	Shock absorbers	Expansion (60,000 sq. ft.)	P
General Motors of Canada Ltd., Oshawa, Ontario.	Assembly plant	Expansion (tenders called)	P
Goodrich, B. F. Canada Ltd., Waterville, Quebec.	Cellular rubber products	Expansion	P
Harding Carpets Limited, Brantford, Ontario.	Automobile carpets	Expansion	P
International Harvester Com- pany of Canada Ltd., Hamilton, Ontario.	Trucks	Expansion and mod- ernization of plant	P
Kralinator Filters Ltd., Preston, Ontario.	Filters	Purchased 30,000 sq. ft. plant for expansion	P
Livingston Wood Mfg. Co. Ltd. Tillsonburg, Ontario.	Boxes and crates for packaging for auto- motive industries.	New plant (420 acres)	P
Mack Trucks Mfg. Co. of Canada Ltd., Oakville, Ontario.	Trucks	New plant (for assembly and mfg.) (80,000 sq. ft. on 20 acre site)	P
Midland-Ross of Canada Ltd., Burlington, Ontario.	Air and vacuum brakes	New plant (100,000 sq. ft. on 70 acre site)	P
Reflex Corp. of Canada, Windsor, Ontario.	Plastic safety arm- rests	Expansion	P
Somerville Industries Ltd., Windsor, Ontario.	Interior automotive trim (Automotive Trim Plant)	New plant (125,000 sq. ft.)	P
Volvo (Canada) Ltd., Halifax, N.S.	Automobiles	New assembly plant (63,000 sq. ft.)	P

EXPANSION OF THE AUTOMOTIVE INDUSTRY IN CANADA

— 1965 —

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C—Completed

P—In process

Motor Vehicles Division
Mechanical Transport Branch
Department of Industry.

EXPANSION OF THE AUTOMOTIVE INDUSTRY IN CANADA—1965

<i>Name—Location</i>	<i>Products</i>	<i>Description of Investment</i>	<i>Status of Expansion</i>
Abex Industries of Canada Ltd., Lindsay, Ontario.	Brake linings	Expansion	P
Allen Industries Canada Ltd., Hamilton, Ontario.	Interior trim products	New plant (125,000 sq. ft.)	P
Automotive Machine & Supply Co. Ltd., Moose Jaw, Sask.	Re-manufacture of engines	Expansion	P
Backstay Welt Limited, Simcoe, Ontario.	Interior trim	New plant (25,000 sq. ft.)	P
Barnes, Wallace Co. Ltd., The Burlington, Ontario.	Springs	Expansion	P
Blackstone Industrial Products Ltd., Stratford, Ontario.	Radiators	Expansion	P
Borden Chemical Co. of Canada Laval, Quebec.	Coatings adhesives for auto industry	New plant (12,000 sq. ft.)	P
Borg-Warner Corp. (Marbon Div.), Cobourg, Ontario.	Chrome plating of plastics, automotive trim	New plant	P
Brantford Trailer & Body Ltd., Cainsville, Ontario.	Truck bodies	Expansion	P
Budd Automotive Co. of Canada, Kitchener, Ontario.	Auto frames	New plant (300,000 sq. ft.) (production to start in 1967)	P
Canada Wire & Cable Co., Fergus, Ontario.	Electrical conductors	New plant (250,000 sq. ft.) (67 acres—To open in 1966)	P

STANDING COMMITTEE

<i>Name—Location</i>	<i>Products</i>	<i>Description of Investment</i>	<i>Status of Expansion</i>
Canadair Limited, Montreal, Quebec.	Buses	Equipping of facilities to manufacture buses	C
Canadian Blue Bird Coach Ltd., Brantford, Ontario.	Bus bodies	Expansion	C
Canadian Cold Forging & Coining, Windsor, Ontario.	Stamped, forged, coined automotive parts	New plant (3,600 sq. ft.)	P
Canadian Filters Ltd., Chatham, Ontario.	Air cleaners for internal combustion engines	New warehouse and expansion (100,000 sq. ft.)	P
Canadian Industries Ltd., Toronto, Ontario.	Automotive refinish and industrial enamels	New 3-storey building	P
Canadian Motor Industries Ltd., Sydney, N.S.	Motor vehicles	Proposed new plant (120,000 sq. ft.)	P
Canadian SKF Company, Scarborough, Ontario.	Ball and roller bearings	Expansion (130,000 sq. ft.)	P
Collins and Aikman Ltd., Lacolle, Quebec.	Textiles and plastic trim	New plant (50,000 sq. ft.)	P
Coulter Mfg. Co. Ltd., Oshawa, Ontario.	Die castings, electro-plating	Expansion	P
Dominion Rubber Co. Ltd., Lindsay, Ontario.	Tirecord	New plant	P
Dominion Rubber Company, St. Jean, Quebec.	Tires	Planned new plant (100 acres) Postponed—Financial Times, Oct. 25/65	P
Duplate Canada Limited, Oshawa, Ontario.	Laminated and heat treated safety glass	Expansion	P
Duplate Canada Limited, Ste. Therese, Quebec.	Safety glass	New plant (35 acres) (Construction to start early 1966)	P
Eaton Precision Products Canada Limited, Wallaceburg, Ontario.	Hydraulic valve lifters	New plant (75,000 sq. ft.)	C
Eaton Springs (Canada) Ltd., Chatham, Ontario.	Springs	New plant (150,000 sq. ft.)	P
Echlin-United of Canada Ltd., Toronto, Ontario.	Automotive ignition parts	Expansion (12,500 sq. ft.)	P
ETF Tools, St. Catharines, Ontario.	Tools	Expansion	P
Essex Wire Corp. Ltd., Ingersoll, Ontario.	Automotive electrical equipment, wiring systems	New plant (115,000 sq. ft.)	P
Fabricated Steel Products (Windsor) Limited, Windsor, Ontario.	Steel stampings and steel fabricated equipment	New plant—Plans to buy 20 acres to build 80,000 sq. ft. plant	P

<i>Name—Location</i>	<i>Products</i>	<i>Description of Investment</i>	<i>Status of Expansion</i>
Firestone Tire and Rubber Co. of Canada Ltd., Joliette, Quebec.	Tires	New plant	C
Firestone Tire and Rubber Co. of Canada Limited, Lindsay, Ontario.	Radiator hose, bushings, motor mountings and rubber products	New plant (60 acres)	C
Firestone Tire and Rubber Co. of Canada Limited, Woodstock, Ontario.	Tire cord	New plant (45,000 sq. ft.)	P
Ford Motor Company of Canada Ltd., Oakville, Ontario.	Passenger cars	Modification and re-equipping plant	C
Ford Motor Company of Canada Ltd., Oakville, Ontario.	Trucks	New office (truck assembly) (51,000 sq. ft.)	C
Ford Motor Company of Canada Ltd., Talbotville, Ontario.	Passenger car assembly plant	New plant (1,400,000 sq. ft.)	P
Ford Motor Company of Canada Ltd., Windsor, Ontario.	Engines	Modernization of engine plant	C
Ford Motor Company of Canada Ltd., Windsor, Ontario.	Transmissions and axles	Renovating and re-equipping to complement above	C
Fram Canada Limited, Stratford, Ontario.	Filters	Expansion (56,000 sq. ft.)	P
Galt-Brantford Malleable Ltd., Paris, Ontario.	Iron castings	New plant (36,000 sq. ft.)	C
Galt Metal Industries Ltd., Galt, Ontario.	Mufflers	Expansion (15,000 sq. ft.)	P
Gates Rubber of Canada Ltd., Brantford, Ontario.	V-belts and hose for industrial & automotive	Expansion	P
General Motors of Canada Ltd., Oshawa, Ontario.	Passenger cars	Expansion (30,000 sq. ft.)	C
General Tubes Limited, Toronto, Ontario.	Exhaust system parts	New plant	C
Goodyear Tire and Rubber Co., Valleyfield, Quebec.	Truck tires	New plant (38,400 sq. ft.)	C
Goodyear Tire and Rubber Co., Owen Sound, Ontario.	Auto foam products	New plant (100,000 sq. ft.)	C
Goodyear Tire and Rubber Co., Collingwood, Ontario.	Hose plant	New plant (100,000 sq. ft.)	P
Go-Tract Limited, Les Cedres, Quebec.	Transport vehicles	New plant	C
Hancock Tire Company, Montreal, Quebec.	Tires—retreading	New plant	C
Harding Carpets Limited, Brantford, Ontario.	Automobile carpets	Expansion (30,000 sq. ft.)	P

STANDING COMMITTEE

<i>Name—Location</i>	<i>Products</i>	<i>Description of Investment</i>	<i>Status of Expansion</i>
Hayes Steel Products Ltd., Thorold, Ontario.	Automobile frames	New plant (300,000 sq. ft.)	P
Hudson Bay Die Castings Ltd., Bramalea, Ontario.	Zinc die castings	New plant (55,000 sq. ft.)	C
ITL Industries Ltd., Hamilton, Ontario.	Molds used in fabrication of auto products	Purchased and planned expansion of Automotive Trim Limited	C
Kelsey Wheel Company, Windsor, Ontario.	Wheels, rims, hub and brake drums	Expansion (130,000 sq. ft.)	C
Kralinator Filters Limited, Preston, Ontario.	Oil, fuel and air filters	Expansion	P
M&T Products of Canada Ltd., Hamilton, Ontario.	Chemicals	Expansion	C
Mansfield-Denman General Ltd., Welland, Ontario.	Auto and truck tires	Expansion (7,000 sq. ft.)	P
McKinnon Industries Ltd., St. Catharines, Ontario.	Automotive parts	Expansion—Foundry (189,000 sq. ft.)	P
McKinnon Industries Ltd., St. Catharines, Ontario.	Engines	Expansion—Engine plant (143,000 sq. ft.)	P
Monsanto Canada Ltd., La Salle, Quebec.	Auto plastic trimmings	New plant	C
Motor Wheel Corp., Chatham, Ontario.	Wheels and exhaust pipes	New plant (105,000 sq. ft. 70 acre site)	P
Motorola (Ontario) Limited, Midland, Ontario.	Car radios	New plant (50,000 sq. ft.)	C
Norton Company of Canada, Hamilton, Ontario.	Abrasive products	Expansion	P
Ontario Steel Products Co., Lacolle, Quebec.	Automotive, railroad and industrial coil chassis springs	New plant (25,000 sq. ft.)	P
Owen's Coach & Body Ltd., Owen Sound, Ontario.	Bus bodies	New plant	C
Perfection Automotive Products (Windsor) Limited, Windsor, Ontario.	Parts and accessories	Expansion (13,000 sq. ft.)	P
Pilkington Brothers (Canada) Ltd., Scarborough, Ontario.	Automotive glass	Expansion to float glass plant	P
Precision Rubber Products (Canada) Limited, Orillia, Ontario.	Automotive rubber products	New plant—relocation (25,000 sq. ft.)	P
Prestolite Battery Co. Ltd., Toronto, Ontario.	Battery containers and covers	New plant (24,000 sq. ft.)	C
Purolator Products (Canada) Ltd., Toronto, Ontario.	Filtering equipment	Expansion (100,000 sq. ft.)	P

<i>Name—Location</i>	<i>Products</i>	<i>Description of Investment</i>	<i>Status of Expansion</i>
Raybestos-Manhattan (Canada) Ltd., Peterborough, Ontario.	Brake linings	Expansion (22,000 sq. ft.)	P
Rockwell-Standard Corp. of Canada Limited, Tilbury, Ontario.	Truck and trailer axles	Expansion	P
Rubbermaid (Canada) Ltd., Cooksville, Ontario.	Car rugs	Expansion (36,000 sq. ft.)	C
SKD Manufacturing Co. Ltd., Amherstburg, Ontario.	Steel stampings	Expansion	C
Sehl Engineering Ltd., Kitchener, Ontario.	Stampings	Expansion	C
Snap-On-Tools of Canada Ltd., Toronto, Ontario.	Tools and wrenches	Expansion (50,000 sq. ft.)	P
Thompson Products Ltd., St. Catharines, Ontario.	Engine components	Expansion (77,000 sq. ft.)	C

STANDING COMMITTEE

EXPANSION OF THE AUTOMOTIVE INDUSTRY IN CANADA

— 1964 —

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CODE—Status of Expansion

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P—In process

Motor Vehicles Division
Mechanical Transport Branch
Department of Industry.

EXPANSION OF THE AUTOMOTIVE INDUSTRY IN CANADA—1964

<i>Name—Location</i>	<i>Products</i>	<i>Description of Investment</i>	<i>Status of Expansion</i>
American Motors (Canada) Ltd., Brampton, Ontario.	Automobiles	New engine plant (200,000 sq. ft.)	C
Anchor Coupling Canada Ltd., Brantford, Ontario.	Flexible hydraulic hose assemblies	New plant	C
Anchor Packing Co. Ltd., Toronto, Ontario.	Gaskets	New plant	C
Aurora Tool & Mfg. Ltd., Aurora, Ontario.	Trailer axles, jacks, couplers, hitches	Mfg. arrangements with U.S. companies	C
Barber Die Casting Co. Ltd., Hamilton, Ontario.	Die castings	Expansion	C
Blackstone Industrial Products Limited, Stratford, Ontario.	Automotive heater and radiator cores	Expansion	C
Bundy Tubing of Canada Ltd., Brampton, Ontario.	Steel tubing	Expansion	C
Butcher Engineering Enterprises Limited, Brampton, Ontario.	Automotive parts (panels)	New plant	C
Canadian Filters Limited, Chatham, Ontario.	Air cleaners for internal combustion engines	Expansion	C
Canadian Name Plate Co. Ltd., Midland, Ontario.	Automotive seat belts	Mfg. arrangements with U.S. company	C
Canadian Ohio Brass Co. Ltd., Niagara Falls, Ontario.	Procelain insulators, bushings and tubes, etc.	Expansion	C
Canadian Timken—Division of Timken Roller Bearing Co., St. Thomas, Ontario.	Tapered roller bearings	Expansion	C

<i>Name—Location</i>	<i>Products</i>	<i>Description of Investment</i>	<i>Status of Expansion</i>
Carter Carburetor of Canada Limited, Brampton, Ontario.	Carburetors	New plant	C
Chrysler Canada Ltd., Windsor, Ontario.	Purchased Walker Metal Products and Young Spring & Wire Corp.		C
Clevite Limited, St. Thomas, Ontario.	Bearings	Expansion	C
Cockshutt Farm Equipment of Canada Limited, Brantford, Ontario.	Trucks	Expansion	C
Columbus McKinnon Ltd., St. Catharines, Ontario.	Tire chains, hoists, trolleys, forgings and stampings	Expansion	C
Commercial Truck Bodies Ltd., Toronto, Ontario.	Truck bodies	Expansion	C
Conroy Mfg. Co. Ltd., St. Catharines, Ontario.	Automobile parts	Expansion	C
Continental Motors of Canada, St. Thomas, Ontario.	Engines	Expansion	C
Cork Mfg. Co. (Canada) Ltd., Toronto, Ontario.	Gasket material for automotives	New plant	C
Davidson Rubber Co. Inc., Toronto, Ontario.	Foam rubber	New plant	C
Dayton Steel Foundry of Canada Limited, Guelph, Ontario.	Truck and Trailer wheels	Expansion	C
Dominion Chain Co. Ltd., Stratford, Ontario.	Chains, Tire chains hand brake cable assemblies	Expansion (new location) 205,500 sq. ft.	C
Dominion Die Casting Ltd., Wallaceburg, Ontario.		Expansion	C
Dominion Fasteners Ltd., Hamilton, Ontario.	Speed nuts, clips and clamps	Expansion	C
Dowty Equipment of Canada Ltd., Ajax, Ontario.	Fuel pumps	Mfg. arrangements with U.S. company	C
Dupli-Colour Canada Ltd., Toronto, Ontario.	Automotive touch-up paint specialties	New plant	C
E.T.F. Tools Limited, St. Catharines, Ontario.		Expansion	C
Eaton Automotive Canada Ltd., London, Ontario.	Automotive heaters, truck axles, etc.	Expansion	C
Elan Tool & Die Limited, Chatham, Ontario.	Stampings, dies, jigs	Expansion	C
Electroline Mfg. Co. Ltd., Windsor, Ontario.	Automotive accessories, fuel pumps, die castings	Expansion	C
Elliott, W. R. Limited, Kitchener, Ontario.	Gear train components	Mfg. arrangements with U.S. company	C

STANDING COMMITTEE

<i>Name—Location</i>	<i>Products</i>	<i>Description of Investment</i>	<i>Status of Expansion</i>
Fasco Controls Limited, Toronto, Ontario.	Electrical automotive controls	Expansion	C
Federal-Mogul-Bower (Canada) Limited, Stratford, Ontario.	Moulding of solid rubber products	Expansion	C
Fleet Manufacturing Ltd., Fort Erie, Ontario.	Heat exchangers	Mfg. arrangements with U.S. company	C
Ford Motor Co. of Canada Ltd., Oakville, Ontario.	Truck assembly	New plant (1,000,000 sq. ft.)	C
Fram Canada Limited, Stratford, Ontario.	Oil, air, fuel and water filters	Expansion	C
General Investment Corp., Montreal, Quebec.	Automobiles	New plant (145,000 sq. ft.)	C
General Motors of Canada Ltd., Oshawa, Ontario.	Truck Chassis	Expansion (Truck chassis plant) (Production for Summer '65)	C
General Motors of Canada Ltd., Windsor, Ontario.	Automotive trim components	New plant (625,000 sq. ft.) (To be completed Summer '65)	C
General Motors of Canada Ltd., Ste. Therese, Quebec.	Automobiles	New plant	C
General Motors Diesel Ltd., London, Ontario.		Expansion	C
General Smelting Company of Canada Limited, Burlington, Ontario.	Zinc chemical, cyaniding zinc dust, aluminum & bronze ingots	Expansion (new location)	C
General Spring Products Ltd., Kitchener, Ontario.	Automobile & truck seat and back springs, metal stampings	New plant	C
Glitch, Fritz W. & Sons (Canada) Limited, Uxbridge, Ontario.	Air cooled heat exchanger	Mfg. arrangements with U.S. company	C
Goodyear Tire & Rubber Company of Canada Ltd., Bowmanville, Ontario.	Tires and tubes	Expansion	C
Goodyear Tire & Rubber Company of Canada Ltd., Valleyfield, Quebec.	Tires and other rubber products	New plant	C
Gosher Rubber of Canada Ltd., Toronto, Ontario.	Automotive hydraulic seals	New plant	C
Gould National Batteries of Canada Limited, Fort Erie, Ontario.	Automotive batteries	Expansion	C
Hallman, J. C. Mfg. Co. Ltd., Kitchener, Ontario.	Automotive jacks	Expansion	C

<i>Name—Location</i>	<i>Products</i>	<i>Description of Investment</i>	<i>Status of Expansion</i>
Halton Auto Electric, Oakville, Ontario.		Expansion	C
Hayes Steel Products Ltd., Thorold, Ontario.	Automotive Parts	Expansion	C
Holland Hitch (Canada) Ltd., Woodstock, Ontario.		Expansion	C
Houdaille Industries, Oshawa, Ontario.	Metal stampings, nickel and chrome plating	Expansion	C
Imperial Eastman Corp. (Canada) Limited, Barrie, Ontario.	Pipe & tube fittings, hose assemblies, etc.	Expansion	C
International Harvester Co. of Canada Limited, Hamilton, Ontario.	Motor trucks	Expansion	C
International Harvester Co. of Canada Limited, Chatham, Ontario.	Motor Trucks	Expansion	C
Irvin Air Chute Limited, Fort Erie, Ontario.	Seat belts, parachutes	Expansion	C
Kelsey Wheel Co. Ltd., Windsor, Ontario.	Automobile, truck wheels, hubs, drums, rims, etc.	Expansion	C
Lightning Fastener Co. Ltd., St. Catharines, Ontario.	Slide fasteners	Expansion	C
Long Manufacturing Co. Ltd., Oakville, Ontario.	Radiators and clutch assemblies	Expansion	C
McCord Corporation Orangeville, Ont.	Automobile radiators, gaskets, unit heaters	New plant	C
McIsaacs, J. & Associates Burlington, Ont.	Automotive com- ponents	New plant	C
McKinnon Industries Ltd., St. Catharines, Ont.	Automobile parts, transmissions, axles etc.	Expansion	C
Mack Trucks Mfg. Company of Canada Limited, Toronto, Ont.	Trucks	New plant	C
Mansfield-Denman General Ltd., Barrie, Ont.	Automobile, bus and truck tires	Expansion	C
Mitten Industries Galt Ltd., Galt, Ont.	Metal stampings	Expansion	C
Morse Chain of Canada Ltd., Simcoe, Ont.	Chains, couplings, clutches	Expansion	C
Motor Specialty Manufactur- ing (Ontario) Limited, Toronto, Ont.	Pistons	New plant	C
Nasco Products Ltd., Saltfleet Township	Fuel and oil pumps	Expansion	C
Norton Company Etobicoke, Ont.	Abrasives	Expansion	C

STANDING COMMITTEE

<i>Name—Location</i>	<i>Products</i>	<i>Description of Investment</i>	<i>Status of Expansion</i>
Ontario Steel Products Co. Ltd., Chatham, Ont.	Automobile and truck springs, etc.	Expansion	C
Ontario Steel Products Co. Ltd., Gananoque, Ont.	Plastic moulding and extrusions	Expansion	C
Rayco Stamping Products Ltd., Windsor, Ont.	Automotive stampings and assemblies	New plant	C
Rubbermaid (Canada) Ltd., Toronto, Ont.	Industrial wire dipped coating	Expansion	C
Shakeproof Fastex—Division Canadian Illinois Tools Ltd. Toronto, Ont.	Metal fasteners	Expansion	C
Sportmen Developments Ltd., Burlington, Ont.	Drink dispensers for cars	New plant	C
Studebaker of Canada Ltd., Hamilton, Ont.	Automobiles	Expansion	C
Templeton Sur-Lok Limited Toronto, Ont.	Automotive carpets	New plant	C
Tridon Manufacturing Ltd., Burlington, Ont.	Hose clamps and automotive turn signal flashers	Expansion	C
Truck Engineering Ltd., Woodstock, Ont.	Truck and trailer bodies	Expansion	C
United-Carr Fastener Co. of Canada Limited, Hamilton, Ont.	Snap fasteners, metal stampings	Expansion	C
Van-Dresser Specialty (Canada) Waterloo, Ont.	Auto parts, insulators	Expansion	C
Van-Wilson Limited (Robin-Nodwell) Burlington, Ont.	Bus and truck bodies	Mfg. arrangements with U.K. company (since cancelled)	
Volvo (Canada) Limited, Toronto, Ont.	Parts	New plant (Office & parts depot) (20,000 sq. ft.)	C
Walker Metal Products Ltd., Windsor, Ont.	Castings	Expansion	C
Western Flyer Coach Ltd., Fort Garry, Man.	Bus assembly	New plant (39,000 sq. ft.)	C
Young Spring & Wire Corp. of Canada, Windsor, Ont.	Springs	New plant	C
Hamilton Automotive Trim Ltd., Hamilton, Ont.	Auto seat covers, carpeting components	New plant	C



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 21

Second and Final Proceedings on Bill S-9,

intituled: "An Act to revise the Interpretation Act and Amendments thereto, and to effect certain consequential amendments to the Canada Evidence Act and the Bills of Exchange Act".

THURSDAY, JUNE 30th, 1966

WITNESS:

Department of Justice: D. S. Thorson, Assistant Deputy Minister,
Legislation Section.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isner	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i>
Cook	Leonard	<i>Shelburne</i>)
Croll	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Davis	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	McCutcheon	Vien
Farris	McDonald	Walker
Fergusson	McKeen	White
Flynn	McLean	Willis—(50)

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, March 1, 1966:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Macdonald, P.C., seconded by the Honourable Senator Bourget, for the second reading of the Bill S-9, intituled: "An Act to revise and consolidate the Interpretation Act and Amendments thereto, and to effect certain consequential amendments to the Canada Evidence Act and the Bills of Exchange Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macdonald, P.C., moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, June 30, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Beaubien (*Provencher*), Benidickson, Blois, Burchill, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Flynn, Gouin, Hugessen, Irvine, Kinley, Lang, Leonard, McCutcheon, McDonald, Molson, O'Leary (*Carleton*), Pearson and Smith (*Queens-Shelburne*) (24).

In attendance: R. J. Batt, Assistant Law Clerk and Parliamentary Counsel.

Bill S-9, "An Act to amend the Interpretation Act", was further considered.

The following witness was heard:

Department of Justice:

D. S. Thorson, Assistant Deputy Minister, Legislation Section.

On Motion of the Honourable Senator McCutcheon it was Resolved to report the said Bill as amended, which amendments appear in the Report of the Committee which forms part of the proceedings of this day.

At 11.15 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, June 30, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-9, intituled: "An Act to revise and consolidate the Interpretation Act and Amendments thereto, and to effect certain consequential amendments to the Canada Evidence Act and the Bills of Exchange Act", has in obedience to the order of reference of March 1st, 1966, examined the said Bill and now reports the same with the following amendments:

1. Page 10: Strike out lines 1 and 2 and substitute the following:

"(6) Words importing male persons include female persons and corporations."

2. Page 12: Strike out line 38 and substitute the following:

(a) in the Province of Quebec, for so long as such days are non-juridical days by virtue of an Act of the legislature of that Province, the Epiphany; the"

3. Page 22: Add to the Schedule the name "Guyana"

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, June 30, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill S-9, to revise and consolidate the Interpretation Act and amendments thereto, and to effect certain consequential amendments to the Canada Evidence Act and the Bills of Exchange Act, met this day at 9.30 a.m. to give further consideration to this bill.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: For the purposes of the record, since the original proceedings were reported, we have today the subcommittee reporting to the committee after having studied the bill. We went over the bill, compared it with the original act which is in force, noted where there were any variations, and we have come up with only three suggestions. One of them is really the suggestion of Mr. Thorson, who is the drafter of the bill, that since Guyana has now become a Commonwealth country it be added to the list in the schedule. I take it the committee would approve of that?

Hon. SENATORS: Agreed.

The CHAIRMAN: The second matter is that in section 26(6) of the bill, dealing with miscellaneous rules of interpretation, it says:

Words importing one gender include all other genders.

In the original act the provision was:

Words importing male persons include female persons and corporations.

Senator Flynn raised the point which I thought had great merit, and I supported it, and Mr. Thorson supports it. All we need now is a motion to replace what is provided in section 26(6) by what is in the act as it presently stands.

Senator BLOIS: I so move.

The CHAIRMAN: The other question arose on line 38, page 12 of the bill, which defines holidays. Clause 28(18) (a) reads:

in the Province of Quebec, the Epiphany; the Ascension; All Saint's Day and Conception Day;

The question arose that in the Province of Quebec by provincial law, although the law is not actually in force yet, these days are no longer by law non-juridical days, and therefore we thought the wording here should be different. The first feeling was to strike it out, but I would not suggest any such action by this committee. It is likely to become unimportant by September of this year when the law in Quebec comes into force dealing with these particular days. Therefore, what we suggest is to strike out line 38 on page 12 and to substitute therefor the following:

By virtue of an act of the legislature of the Province of Quebec, the Epiphany...

STANDING COMMITTEE

The second line would remain as it is. Therefore, we simply strike out the first line (a) of line 38 on page 12. This simply means that as and when the law in Quebec comes into force and these days no longer are non-juridical days, then this provision in the Interpretation Act will have no further effect.

Senator McCUTCHEON: I have no objection to that, Mr. Chairman, but surely that could be achieved by striking out (a) and making it—

The CHAIRMAN: My own feeling is that I would not join in striking out a section that related to non-juridical days in the Province of Quebec. I would rather say that if they ceased to become holidays by reason of actions of the Province of Quebec, all right.

Senator FLYNN: I am willing to take the responsibility of moving that (a) be struck out entirely.

Senator McCUTCHEON: What about St. Jean Baptiste Day?

The CHAIRMAN: That is a non-juridical day.

Senator McCUTCHEON: I have no objection to the change.

The CHAIRMAN: I have a motion to amend line 38 in the manner in which I have suggested.

Senator HUGHES: Mr. Chairman, I had one thing in mind. Is not the apostrophe in the wrong place in "All Saint's Day"?

The CHAIRMAN: Yes. That will be corrected. We do not need a motion for that.

Senator FLYNN: I have no objection to the change but I would mention that if the other place adopts this bill before we come back in the fall—

The CHAIRMAN: So far as the Chairman is concerned, I am going to step very carefully here. There is something in the statute now. In this bill there is something with a particular reference, and I am prepared to put in the words of limitation as the legislature of Quebec may pronounce them, but I am not going to strike it out.

Senator McCUTCHEON: Question?

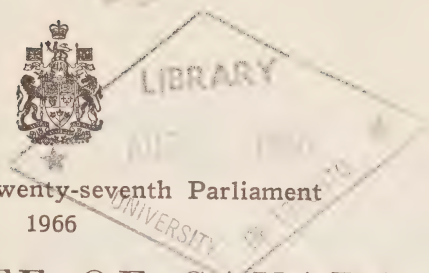
The CHAIRMAN: Shall I report the bill as amended?

Bill reported as amended.

Whereupon the committee adjourned.



First Session—Twenty-seventh Parliament
1966



THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 22

Complete Proceedings on Bill S-41,
intituled: "An Act respecting La Société des Artisans".

WEDNESDAY, JULY 6, 1966

WITNESS:

Luc Parent, Parliamentary Agent.

REPORT OF THE COMMITTEE

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE
the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Leonard	Thorvaldson
Croll	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Davis	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McDonald	White
Fergusson	McKeen	Willis—(50)
Flynn	McLean	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, June 29, 1966:

"Pursuant to the Order of the Day, the Honourable Senator Deschatelets, P.C., moved, seconded by the Honourable Senator Bourque that the Bill S-41, intituled: "An Act respecting La Société des Artisans", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Deschatelets, P.C., moved, seconded by the Honourable Senator Bourque, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, July 6, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Benidickson, Blois, Cook, Croll, Fergusson, Flynn, Gélinas, Gouin, Irvine, Isnor, McDonald, Molson, Pearson, Pouliot and Smith (*Queens-Shelburne*)—(17).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel and R. M. Belisle, Law Translator.

On motion of the Honourable Senator Cook it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-41.

Bill S-41, "An Act respecting La Société des Artisans", was read and considered.

The following witness was heard:

Luc Parent, Parliamentary Agent.

On Motion of the Honourable Senator Croll it was Resolved to report the said Bill without amendment.

At 9.45 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, July 6, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-41, intituled: "An Act respecting La Société des Artisans", has in obedience to the order of reference of Wednesday, June 29th, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, July 6, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill S-41, respecting La Société des Artisans, met this day at 9.30 a.m., to give consideration to the said bill.

Senator **SALTER A. HAYDEN** in the Chair.

The **CHAIRMAN**: In dealing with Bill S-41, respecting La Société des Artisans, Mr. Luc Parent, Parliamentary Agent, is here. Although the Department of Insurance has been notified, there is no person present from the department. However, they have seen and reviewed the bill.

May I have a motion to report the usual number of copies of the committee's proceedings in English and French?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The **CHAIRMAN**: Mr. Parent, would you care to give an explanation of the purpose and scope of this bill?

Mr. Luc Parent, Parliamentary Agent: Mr. Chairman, honourable senators, we are proposing four amendments to the law respecting La Société des Artisans.

The only purpose of the first one is to correct the French version of section 5 of the bill, to render it in conformity with the French version of the Canadian and British Insurance Companies Act.

The **CHAIRMAN**: Would you just explain that? What are you correcting?

Mr. **PARENT**: In section 5 as it exists right now, paragraph (a) refers to the society as being "a fraternal benefit society" when the section of the law refers to this kind of society as being "a fraternal society for mutual assistance".

The **CHAIRMAN**: Are there any questions on that?

Senator **ROLL**: This is bringing it into conformity with the Companies Act?

The **CHAIRMAN**: No, the Canadian and British Insurance Companies Act.

Senator **ROLL**: I see no objection to that.

Senator **GUIN**: Subparagraph (c) of your new section 5 reads, at line 20:

"for the benefit of its members and the beneficiaries whom they may designate".

I think the former version was better.

Mr. **PARENT**: If you put the expression "a fraternal society for mutual assistance" it would be redundant to repeat "for the benefit of its members."

Senator **GUIN**: It is up to you, but it is possible to understand it. It is merely the article "les" instead of "Des" as it read formerly.

Mr. **PARENT**: In this case I agree with you. I think it is an error.

Senator GOUIN: I would rather put it that way.

The CHAIRMAN: Have you any comment on that, Mr. Belisle?

Mr. R. M. Belisle, *Law Translator*: It is an error in the copy.

The CHAIRMAN: I think we can treat it as a typographical error.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, we have not heard very much of what has been said since the committee started. Could we have more volume?

The CHAIRMAN: There are two things, Mr. Parent. Would you repeat your explanation of this loudly, and keep in mind that we have not a French *Hansard* reporter here this morning. If you get into French words you will have to go slowly.

Mr. PARENT: The purpose of the first amendment to the bill is a question only of rendering this section in conformity with the section of the law which deals with fraternal benefit societies under the Canadian and British Insurance Companies Act.

The CHAIRMAN: Where in that act you deal with fraternal benefit societies.

Mr. PARENT: In section 5, as it exists right now, paragraph (a) says that the purposes of the society are:

"be and remain a fraternal benefit society"

instead of saying "a fraternal society for mutual assistance". This last expression would be exactly the text that is employed in the Canadian and British Insurance Companies Act.

Senator FLYNN: The English version is all right?

Mr. PARENT: Yes.

Senator Gouin has suggested that in section 5(c) it says:

... "on mutual principles solely for the benefit of its members and the beneficiaries whom they may designate."

In the new text it says:

... "mutual principles solely for the benefit of its members and the beneficiaries, whom they may designate."

Mr. E. Russell Hopkins, *Law Clerk and Parliamentary Counsel*: No formal amendment would be necessary. We will treat it as a typographical error, and it will be corrected in both English and French versions.

The CHAIRMAN: Is there anything further in relation to this particular section? Shall we move on to the other sections in which you are making some additions to your original act?

Mr. PARENT: According to the law as it exists La Société des Artisans could have some of the risks it assumed reinsured by other insurance companies. What we are asking here is that La Société des Artisans be given the power to reinsure risks assumed by other fraternal benefit societies, the first condition being that the fraternal benefit society from which we are taking these risks should have the power to have them reinsured by another corporation; the second being that the class of insurance we would be reinsuring be in the classes of insurance which we have the power to insure; and the third condition being that in the case in which we make this reinsurance the person insured under the policy becomes a membre of the society.

The CHAIRMAN: What does that involve?

Mr. PARENT: This would involve that we notify him that he has become a member of the society.

The CHAIRMAN: What does he have to do or pay to become a member?

Mr. PARENT: According to our by-laws, the only condition for being a member of the society is to be insured by the society.

Senator GÉLINAS: To join the society you do not have to pay any fees?

Mr. PARENT: No, you have to pay your premium.

Senator GÉLINAS: It says, to become a member of the society.

Senator FLYNN: You are a member if you are insured?

The CHAIRMAN: You are a member if you are insured, except there has to be some formal act rather than automatically becoming a member.

Mr. PARENT: You are notified you are insured, and being a member of the society you have the right to vote at the meetings, and you elect members to the General Council.

The CHAIRMAN: What is the next point?

Mr. PARENT: As our statute stands right now, the convention which is the general meeting of the members of the society, has the right to legislate in matters of insurance, to pass insurance by-laws. What we are asking is that this power be given to the General Council of the society and that the General Council of the society be given the power to delegate its power to the Executive Council.

Senator PEARSON: What is the General Council?

Mr. PARENT: The General Council is elected every four years by the delegates to the general meeting of the society, and the General Council sits four times a year, whereas the Executive Council sits two times a month.

The CHAIRMAN: Would the General Council correspond to a board of directors?

Mr. PARENT: Yes.

Senator GOUIN: How many members do you have on the General Council?

Mr. PARENT: Twenty-one.

The CHAIRMAN: Are there any further questions on this particular amendment? Are there any other changes, Mr. Parent?

Mr. PARENT: Yes. According to the charter as it exists right now the members of the Executive Council must all be elected from members of the council who are residing in the greater Montreal area. We are asking—

The CHAIRMAN: And who are members of the General Council?

Mr. PARENT: Yes, and who are members of the General Council. We are asking that this restriction be removed so that the Executive Council be elected from the members of the General Council, but not restricted to the Montreal area.

The CHAIRMAN: There is no geography about it?

Mr. PARENT: That is right.

Senator FLYNN: The suburbs of Montreal take in the whole province, do they not?

The CHAIRMAN: I understand that that is a concept some people have. Are there any other questions, or is there any further information that the committee wants? If not, is it agreed that I report the bill?

Hon. SENATORS: Agreed.

The committee adjourned.



First Session—Twenty-seventh Parliament

1966

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THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 23

Complete Proceedings on Bill C-111,
intituled: "An Act to incorporate Bank of Western Canada".

THURSDAY, JULY 7, 1966

WITNESSES:

J. R. Tolmie, Q.C., Parliamentary Agent; James E. Coyne, provisional director; Sinclair McK. Stevens, provisional director.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Leonard	
Croll	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Davis	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	McCutcheon	Vien
Farris	McDonald	Walker
Fergusson	McKeen	White
Flynn	McLean	Willis—(50)

(Quorum 9)

Ex Officio members: Brooks and Connolly (*Ottawa West*).

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, July 6, 1966:

"Pursuant to the Order of the Day, the Honourable Senator Leonard moved, seconded by the Honourable Senator Paterson, that the Bill C-111, intituled: "An act to incorporate Bank of Western Canada", be read the second time.

After debate, and—

The question being put in the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Leonard moved, seconded by the Honourable Senator Paterson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

With leave of the Senate,

The Honourable Senator Leonard moved, seconded by the Honourable Senator Paterson:

That Rule 119 be suspended with respect to the Bill C-111, intituled: "An Act to incorporate Bank of Western Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, July 7th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Baird, Blois, Burchill, Cook, Croll, Fergusson, Gélinas, Gouin, Haig, Hugessen, Irvine, Isnor, Lang, Leonard, Macdonald (*Cape Breton*), McDonald, McLean, Pearson, Roebuck, Smith (*Queens-Shelburne*), Thorvaldson, Vaillancourt, Walker and Willis. (27).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Walker it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-111.

Bill C-111, "An Act to incorporate Bank of Western Canada", was read and considered.

The following witnesses were heard:

J. R. Tolmie, Q.C., Parliamentary Agent.

James E. Coyne, provisional director.

Sinclair McK. Stevens, provisional director.

On motion of the Honourable Senator Leonard it was Resolved to report the said bill without amendment.

At 10.00 a.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, July 7th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill C-111, intituled: "An Act to incorporate Bank of Western Canada", has in obedience to the order of reference of July 6th, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, July 7, 1966.

The Standing Committee on Banking and Commerce to which was referred Bill C-111, to incorporate Bank of Western Canada, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. HAYDEN in the Chair.

The CHAIRMAN: Honourable senators, it is now 9.30. We have a quorum and I call the meeting to order. This morning we propose to consider two bills, Bill C-111 and Bill S-42. First, the usual motion is required with respect to the printing of the proceedings of the committee.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Subject to the wishes of the committee I propose that we should deal with Bill C-111 first, is that agreed?

Hon. SENATORS: Agreed.

The CHAIRMAN: The people here representing the proposed Bank of Western Canada are Mr. Tolmie, Q.C., who is the Parliamentary Agent, Mr. James E. Coyne, Mr. Sinclair McK. Stevens and Mr. Phillip McDonald.

Mr. Tolmie, who is going to carry the ball in the first instance?

Mr. J. R. Tolmie, Q.C. Parliamentary Agent: May it please the committee, Mr. Chairman, I would like to introduce the gentlemen who are with me: Mr. Coyne, Mr. Sinclair Stevens, Mr. Maxwell Bruce, and Mr. Phillip McDonald. We suggest that Mr. Coyne should make a short statement to bring you up to date on what has happened since we first came before you 2½ years ago, and I shall be available to answer any questions.

Senator THORVALDSON: Are we not fully aware of what has happened in the last two years?

The CHAIRMAN: We are fully aware of what has happened, and we got a history yesterday in the Senate. However there is one item on which you might be brought up to date, and that is as to whether there is any comparison between the situation when we first held hearings on this bill and this moment.

Mr. James E. COYNE: Mr. Chairman, honourable senators, thank you for this further opportunity to appear before you. As you know it is something over 2½ years ago since we took the first formal steps to get a bank charter for the Bank of Western Canada, and it is almost exactly two years ago that this honourable body gave approval to that first application in committee and later in the Senate. It took a little longer to get through the House of Commons, but finally that procedure has been completed in a new session of Parliament which, of course, requires that we should come back to you a second time.

Our basic project is practically identical. I cannot think of any significant difference from the project we outlined to you two years ago. We wish to establish a new bank which will have its sphere of operations in western Canada predominantly. We propose that the head office should be in western Canada, and that the management and all head office staff should be in western Canada. That is to say in the city of Winnipeg. The bank should establish branches throughout western Canada, make its appeal to the public for raising deposits in western Canada, and make its loans in western Canada. It will, of course, have to have an office in Toronto or Montreal—Toronto would be most likely—for carrying on operations in the money market and short-term funds. It will also have to have an office in Ottawa for relations with the Bank of Canada and for clearing-house purposes. Basically its operations will be in Winnipeg and the four western provinces.

The authorized capital is \$25 million, and in an effort to show Parliament that funds of this sort could be obtained, or that sufficient funds could be obtained, we arranged two years ago to raise \$13 million of which \$8 million or \$9 million would be capital and the remainder would be reserve. They would be the initial funds, and they are all available and can be put on deposit with the Receiver General or with the Bank of Canada in accordance with the Bank Act very soon after royal assent is given to the bill establishing the bank.

The CHAIRMAN: On that point I was wondering if the money which you indicated was available then was still available, and is it available from the same sources and in the same proportions, or has there been any change in that?

Mr. COYNE: There has been no change in that at all. I think I have all the figures correctly in my mind, but \$6.6 million was raised in the form of trustee certificates which will be converted into bank stock. The money was placed on deposit with one of Canada's senior trust companies and it has been laid out by them on deposit with existing charter banks at interest, and that interest, less expenses, has been paid over. Another \$3½ million was raised by the Wellington Finance Corporation, also in the form of trustee certificates which, however, will be converted into Wellington stock, and Wellington, in turn, will become a shareholder in the bank to the extent of \$3½ million. That brings us up to something over \$10 million. There was Canadian Finance and Investments Limited, in Winnipeg, which made arrangements to raise a total of \$4 million, and most of it is already in, of which \$2¼ million will be subscribed for bank stock in accordance with the arrangements previously made.

Finally, there are one or two other subscribers. The York Trust Company of Toronto undertook to subscribe \$500,000, and one or two others like that, which brings it up to a total of \$13 million.

That is a lot of money, or at least it seemed so at the time we were first arranging for it, but it is very small in relation to the other chartered banks in the country. This will not be a large bank to start with and will not be able to engage in large financial operations. It will take some years to build up a large volume of deposits. I think I said in the other place in committee that if by the end of one year we had \$15 million in deposits and \$13 million in capital we still would not be in a position to make any larger loan than perhaps \$100,000 to any one customer. Of course, that would be helpful and useful to a number of business enterprises and individual citizens in western Canada.

The intention is that the bank would operate in western Canada and would carry on the normal operations of a chartered bank, consistent with its size. The intention is that the great majority of its directors will be residents of western Canada. The provisional directors and sponsors of the original application have asked me if I would take on the job of president. I said I would, in due course, if a permanent board of directors wants me to, on the understanding that while it would not have to be a full-time job on my part I would give it all the time I

thought it required, but the actual operations of the bank will be carried on by experienced bankers.

We know there are some experienced bankers of considerable standing who would be interested in taking on a new type of project of this sort, engaged in the building up of a new bank, and we have had some applications both from bankers and people from other financial institutions which we could not do anything about as long as any uncertainty whatever existed as to when, if at all, the charter was going to be granted. We could not ask anybody to sever his ties and burn his bridges behind him before we knew for sure we had a job for him.

But we have been encouraged by the indications we have had that there are quite a few good men who would like to come and join this enterprise and help build it up.

The provisional directors, as you perhaps know, consist of myself, Mr. Stevens of Toronto, Mr. Maxwell Bruce, Q.C., of Toronto, Mr. E. R. P. Nesbitt of Winnipeg, and Mr. Leslie Bodie of Edmonton. Three of those are now living in western Canada. I made arrangements a couple of months ago to move my residence from Toronto to Winnipeg. I am only half-way there. I have sold my house in Toronto but I have not yet bought a house in Winnipeg. At that time I had no more assurance than at any other time during the past two years that we were going to get this charter, but I felt that I had to make that move and get on with it rather than perhaps have to make a difficult move in November, December, January or February, or some other such time.

I have mentioned the fact that a lot of capital has already been raised which will become the initial capital of the bank. There is one point I should mention. About \$10 million of the \$13 million was raised on condition that it would be repaid to the subscribers if a charter were not received by a certain time; but there was a provision made that the subscribers could, by agreement, extend that time by one year.

Senator ISNOR: Is that \$10 million of the \$15 million?

Mr. COYNE: It is \$10 million out of the \$13 million of the actual money.

Senator ISNOR: Not out of the \$25 million?

Mr. COYNE: No.

Senator ISNOR: There is still a balance of \$10 million?

Mr. COYNE: Yes, but of this original \$10 million raised by way of trust certificates the provision was that it would expire at the end of February, 1966, if there were no bank charter granted, but provision has been made for the extension of that period by one year. Meetings were held of the holders of these certificates, and I think it was virtually a unanimous vote for extending the period for one year, so that is the only change, perhaps, in the setup from what it was two years ago, Mr. Chairman.

Senator ISNOR: Would you refer to the balance of \$10 million?

Mr. COYNE: That has not been provided for yet. That would be capital which, in due course, the bank could appeal to its shareholders to provide by way of further capital, presumably by making rights issues in the way the other banks do.

Senator LEONARD: It is purely a statutory authorized amount and not issued nor intended to be issued at the present time?

Mr. COYNE: Yes, we would start off with \$13 million, of which about \$8½ million would be capital and \$4½ million reserves.

Senator McLEAN: Mr. Chairman, is this supposed to be a regional bank or a national bank spread right across the country?

Mr. COYNE: It will in law be exactly the same as all other banks, and it is capable of being a national bank, but the intention is to start it off as a regional bank.

Senator McLEAN: I remember putting on *Hansard* some time ago that the position of regional banks was far from good.

Mr. COYNE: The present national banks started as regional banks. I think eventually it will be a national bank.

Senator ISNOR: How do you propose to deal with transactions from the extreme west of Winnipeg to the Maritimes?

Mr. COYNE: Our paper will go out to different parts of the country and be presented for payment. We would do that in the same way as all other banks do. Most towns in Canada have only one bank, but drafts of all the other banks come into those single branches of banks just the same, and by arrangement they are routed through the bank which has a branch in that town and go through the clearing house and are sent back to the place where they started from.

Senator ISNOR: You referred to the fact this was a western bank.

Mr. COYNE: Yes.

Senator ISNOR: But you might establish an office in Toronto?

Mr. COYNE: Yes.

Senator ISNOR: You did mention Montreal, I believe, but you did not go beyond that.

Mr. COYNE: We do not have any early plans for opening in the Maritimes. I wish we did, but I think we had better stick to western Canada for the time being. There is a bank with a charter that has only six or seven branches, and I do not believe it is in the Maritimes, the Mercantile Bank of Canada. And la Banque Provinciale du Canada and la Banque Canadienne Nationale have very few, if any, branches outside the Province of Quebec, but their cheques do circulate all across the country.

The only other thing I might mention is that we have been interested to see the reference in the papers to the fact the federal Government will bring in legislation for deposit insurance for banks and other banking institutions. I take a very great personal interest in this, because I was urging it on the Government for about 10 years while I was in Ottawa, and I have been advocating it for at least 15 years both privately and publicly. I think it is a very important and desirable form of legislation to have.

The CHAIRMAN: Who pays for that?

Mr. COYNE: The banks and institutions covered will pay the insurance premium, and it will come out of the general operating costs.

The CHAIRMAN: Do you think, if we get deposit insurance, the requirement of maintaining deposits or reserves with the Bank of Canada will no longer be required?

Mr. COYNE: I do not know the Government's mind on that matter.

The CHAIRMAN: I am just rationalizing.

Mr. COYNE: I think deposit insurance is designed to give assurance and confidence to the public, and to make it unlikely, to say the least, that there will ever again be a run on a bank by the general public. There might be insurance only on deposits up to \$10,000 per person, or something like that, or perhaps all the reserves held by the Bank of Canada might be held by the deposit insurance companies to assure the maintenance of the liquidity of banks, because surely there will be regulations laid down which banks and trust companies will have to follow in the conduct of their affairs in order to be eligible for deposit insurance. That is why I think it will be a good thing. You will in that way have a national set of standards for all financial institutions wanting to get the deposit insurance.

However, I brought this up not in respect to a discussion of this legislation itself; it is a matter of Government policy. This will be of great benefit to the Bank of Western Canada and to any new bank that comes along—and I hope there will be many of them in the next ten years. They will have the advantage of having deposit insurance, and of having assurance given to the public that so long as they conduct their affairs to the satisfaction of the governing authorities the public need have no fear in respect of putting its money into these institutions.

The CHAIRMAN: Is it not available now?

Mr. COYNE: No.

The CHAIRMAN: If you wanted to get it is there not some institution somewhere which would write it?

Mr. COYNE: No, there is nowhere that we could go that I have heard of.

Further, if and when royal assent is given to this bill and our charter is granted we have to bring in the capital, and show the Treasury Board that we have that capital, and are properly organized before we can start doing any banking business. Getting the charter is only the first step. After that you have to get a licence or certificate from the Treasury Board before you can start doing banking business. You have twelve months, and only twelve months, after the passage of the act in which to do that, so we hope we can get this charter as soon as possible.

Senator WALKER: Even if this bill receives royal assent within the next few days all of your time will be taken up, will it not, in getting all that done before the extension of the provisions of the Bank Act expires in February?

Mr. COYNE: Yes, you are quite right, senator. This is what we are working against. We have to try to get a licence by February.

The CHAIRMAN: There is a nice little timing arrangement there. You have to put the money in in order to go to the Treasury Board and get the certificate?

Mr. COYNE: Yes.

The CHAIRMAN: If the certificate was delayed in its issue beyond February then you would have a—

Mr. COYNE: We would have to give all of the money back at some stage, I suppose. Mr. Stevens and I will be very glad to answer any further questions the committee has, but I think I have said all I need to say by way of opening statement.

The CHAIRMAN: Has the committee any questions to ask Mr. Coyne?

Senator HAIG: Mr. Chairman, on page 4 of the bill it is provided that the bank shall refuse to allow a transfer of a share of the capital stock of the bank to Her Majesty in right of Canada, and then on page 6 there is a reference to the voting rights of shares held by governments.

Mr. COYNE: Would you give me the reference on page 4, senator?

Senator HAIG: I am referring to clause 6, subclauses 3(a) and 3(b), which provides that no shares shall be transferred to a government. Clause 7, subclauses 3(a) and 3(b), provides that the voting rights of shares held by governments shall not be exercised. In one case you say that no shares shall be transferred to a government, and then in the other you say that the voting rights shall not be exercised.

Mr. COYNE: I might say that this is not our decision. I will ask Mr. Tolmie to check on this point. The actual wording of this was taken by us directly from the draft of last year's Bank Act, with one modification introduced by the Inspector General of Banks when we were talking to him about it. This is

Government drafting by the Department of Justice and the Department of Finance. We simply said: "We will do whatever you like. We will put in our bill in advance of the change in the Bank Act whatever provisions you expect to have in the Bank Act, because we know it is Government policy to restrict or reduce the holdings in a bank by a provincial government, and to restrict or reduce the shares held in a bank by a non-resident, or by any Canadian for that matter". All of those points are intended to be covered.

Senator HAIG: But in one section you say no shares shall be transferred to a government, and then you refer to the voting shares held by a government.

Mr. TOLMIE: Mr. Chairman, I am not sure why this was put in this bill, but the prohibition against the transfer of shares in the bank to a government was to apply when the Bank Act came into force. That act is still not passed. At the time that the first Bank Act bill was introduced in the House of Commons there was another bank applying for incorporation with respect to which there was a suggestion or possibility that a provincial government would own a certain number of shares. If that incorporation took place before the Bank Act came into force you would not have had a transfer of the shares after the Bank Act came into force. It would have occurred on the issue of the charter.

Mr. COYNE: I think I have the point that Senator Haig wants to know about. On page 4 clause 6(3) (a) provides:

The Bank shall refuse to allow a transfer of a share of the capital stock of the Bank to

(a) Her Majesty in right of Canada or in right of a province—

That is fine. The bank will obey the law as all other banks will, of course, but a government or somebody else could be the beneficial owner of shares even though they are not registered in its name, and the Government's position is, as a matter of policy, that it wants to make clear that those shares cannot be voted. I think that is the point.

Senator HAIG: Thank you.

The CHAIRMAN: I am not sure of how sound that is because the only people who can vote are those whose names appear on the register as shareholders.

Mr. COYNE: The draft statute says that the voting rights pertaining to any shares shall not be exercised when those shares are held in the right, or for the use or benefit of Her Majesty—I am a little out of my field here because this is Government policy; it is not our policy.

Senator LEONARD: I would point out that voting rights can be given by bona fide holders of shares to a government by proxy. This is merely the blocking off of a loophole, because it might be possible for such shares to be voted.

The CHAIRMAN: I suppose you are thinking of the kind of situation where some shares might be deposited with a provincial government as security for some purpose.

Senator HUGESSEN: Mr. Chairman, that brings to mind the statement made by the Minister of Finance the other day in introducing the Bank Act. He said there was a possibility under the Bank Act of certain provincial governments or organizations becoming the owners of shares in a bank up to a certain limit, but without voting powers.

Mr. COYNE: Yes, Mr. Chairman, I have just one more point. So far as this bill is concerned, Senator Haig, we put those provisions in the draft of our bill to meet the wishes of the Government. It is provided that this clause in our bill will die unless it is re-enacted in the revision of the Bank Act, or it will be replaced by whatever provision is in the Bank Act. I think you will have a good opportunity of wrestling with the technicalities of the question, and of perhaps amending the section, when it comes before you in the form of the new Bank

Act. All we are doing is trying to go along with Government policy in the interim until the new Bank Act is passed.

Senator WALKER: This follows what is called the draft Bank Act?

Mr. COYNE: Yes.

The CHAIRMAN: You are subject to these provisions only until the new act comes into force?

Mr. COYNE: Yes.

The CHAIRMAN: And after that you will be subject to whatever the new act says?

Mr. COYNE: Yes.

Senator ROEBUCK: Will that prevent the voting of shares which are in the hands of, say, the Official Guardian? Such shares would be within Government control, would they not?

The CHAIRMAN: Well, the chairman is not going to give a legal opinion on that in advance of the situation occurring.

Are there any other questions of Mr. Coyne? Thank you, Mr. Coyne.

Mr. Stevens is here, and he is a moving spirit in this. Have you anything to add, Mr. Stevens?

Mr. Sinclair McK. Stevens, Provisional Director: Mr. Chairman, I would say only that there has been no material change in our position as a group, or in my own personal position, since the last time we had the opportunity of appearing before you. I think I should only, in effect, reiterate everything I said at that time and stop at that point, and then just be available for questioning.

The CHAIRMAN: Are there any questions the committee wishes to ask Mr. Stevens? If not, are you ready for the question? Shall I report the bill without amendment?

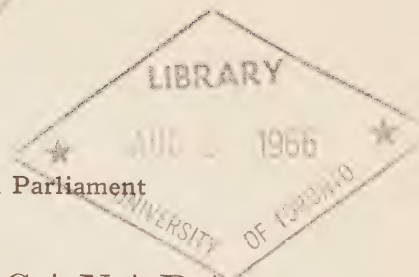
Hon. SENATORS: Agreed.

The committee concluded its consideration of the said bill.



First Session—Twenty-seventh Parliament

1966



THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 24

Complete Proceedings on Bill S-42,
intituled: "An Act to amend the Canadian Corporation for
the 1967 World Exhibition Act".

THURSDAY, JULY 7, 1966

WITNESSES:

Canadian Corporation for the World Exhibition: Jean Claude Delorme,
Secretary; Robert Hope, Legal Adviser.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

the Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i>
Cook	Leonard	<i>Shelburne</i>)
Croll	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Davis	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	McCutcheon	Vien
Farris	McDonald	Walker
Fergusson	McKeen	White
Flynn	McLean	Willis—(50)

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, July 6, 1966:

"Pursuant to the Order of the Day, the Honourable Senator Lang moved, seconded by the Honourable Senator Cook, that the Bill S-42, intituled: "An Act to amend the Canadian Corporation for the 1967 World Exhibition Act", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Burchill, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, July 7th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Baird, Blois, Burchill, Cook, Croll, Fergusson, Gélinas, Gouin, Haig, Hugessen, Irvine, Isnor, Lang, Leonard, Macdonald (*Cape Breton*), McDonald, McLean, Pearson, Roebuck, Smith (*Queens-Shelburne*), Thorvaldson, Vaillancourt, Walker and Welch. (27)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Croll it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-42.

Bill S-42, "An Act to amend the Canadian Corporation for the 1967 World Exhibition Act", was read and considered.

The following witnesses were heard:

Canadian Corporation for the World Exhibition:

Jean Claude Delorme, Secretary.

Robert Hope, Legal Adviser.

On motion of the Honourable Senator Walker it was Resolved to report the said Bill without amendment.

At 10.45 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

STANDING COMMITTEE

REPORT OF THE COMMITTEE

THURSDAY, July 7th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-42, intituled: "An Act to amend the Canadian Corporation for the 1967 World Exhibition Act", has in obedience to the order of reference of July 6th, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, July 7, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill S-42, to amend the Canadian Corporation for the 1967 World Exhibition Act, met this day at 10.00 a.m. to give consideration to the bill.

Senator SALTER A. HAYDEN in the Chair.

The CHAIRMAN: We are now to consider Bill S-42, an act to amend the Canadian Corporation for the 1967 World Exhibition Act. We have present as witnesses Mr. Jean Claude Delorme, Secretary of the Corporation, and Mr. Robert Hope, legal adviser.

This bill originated in the Senate, so possibly we should have a *Hansard* report.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

Mr. Jean Claude Delorme, Secretary, Canadian Corporation for the 1967 World Exhibition Act: Mr. Chairman, honourable senators, I would say very briefly that Canadian Corporation for the 1967 World Exhibition Act was amended once before to provide statutory protection for some marks of the corporation, such as "Expo '67" as a symbol of the exhibition.

Concurrently we have devised a commercial licensing program which consists in allowing the people to use the symbol or the marks of the corporation either on a promotional basis or for commercial purposes, to make souvenirs, and so on. Therefore, we have a very definite licensing program, and having established that program we have set our budgets accordingly, because we expect to derive substantial revenue from this.

Senator ISNOR: What is your present estimate?

Mr. DELORME: Our estimate at the present time is \$500,000, although I must say it is a very conservative estimate. It could well be over \$500,000. We feel that having established that program we must be given the tools to implement it 100 per cent.

Over the last year or so we have gathered some experience. We have consulted with the New York World's Fair officials and have acquired more knowledge than we had. Furthermore, we have spotted infringements or potential infringements of our marks, which infringements could not be prosecuted under the act.

We feel the public must be protected, that the exhibition being a Government organization the public is entitled to some protection and also to have the benefit of souvenirs, post cards, and so on, that are official from the exhibition.

Having said that, honourable senators, I would say that there are three categories of amendments. The first one is to complement the provisions of the

present act. As the act reads, the marks of the corporation are not deemed to be applied to a product. Therefore, no infringement is assumed when it is used in advertising.

The only infringement covered by the act is when the mark is used on the product itself or on the package. We would now like to extend this to the advertising that would accompany the product without being necessarily on the product itself.

The CHAIRMAN: Do you think there is value in advertising and using a mark of the corporation and then not having any mark on the package?

Mr. DELORME: I believe so, Mr. Chairman, and I think if I give you an example it will be clearer. For instance, someone could advertise as follows: "Get your Expo '67 sunglasses", but the package or the sunglasses themselves would not bear the symbol or the mark "Expo '67". That is an example of what we intend to cover by this amendment.

Senator CROLL: Supposing he said, "Get your sunglasses for Expo '67"?

The CHAIRMAN: That is different.

Mr. DELORME: Yes, it is a little different, because as a matter of fact he would be referring to a fact, to an event. I must admit that we do not pretend that we will cover all cases, because theoretically to achieve this would be tantamount to preventing anyone in Canada from using "Expo '67" for any purpose whatsoever, and this is certainly not our intention.

Senator ASELTINE: Who is going to make the assessment?

Mr. DELORME: The amendment as it reads now is restricted enough so that when people use the mark in good faith and for promotional purposes of the exhibition itself the corporation could not readily intervene. The corporation's intention is to prosecute only when the infringer is using the mark to derive some commercial benefits, monetary benefits.

Senator ASELTINE: How are you going to enforce it?

Mr. DELORME: By an injunction.

Senator CROLL: Give us an example. Suggest some product.

Mr. DELORME: Sunglasses. If you go into a drugstore and see a sign which says, "Get your Expo '67 sunglasses here," as the act exists now there is nothing we can do to prevent that person from so advertising unless "Expo '67" is on the product itself, and that product itself is called "Expo '67". If the act reads, "Get your sunglasses and go and visit Expo '67", even for that amendment we would not be able nor would we wish to intervene. Maybe the distinction is very subtle—*distinction ténue*.

Senator ASELTINE: I think that is splitting hairs.

Senator CROLL: Let us take the case of a souvenir postcard, a picture of Expo '67, something to do with Expo, and let us say it is sold in Saskatoon, or somewhere else. How do you deal with that?

Mr. DELORME: As a matter of fact, that particular case is dealt with specifically by the last amendment, which is section 18B. Do you wish me to elaborate on this point further, Mr. Chairman?

The CHAIRMAN: You might as well deal with the question now.

Mr. DELORME: This question of copyright in photographs under the general legislation is perhaps summarized as follows. An architect, for instance, has a copyright in the drawings he has made for a certain building, but if an individual photographs a building the photographer immediately acquires a copyright in the photograph and he may reproduce it in any number for any purposes without the architect having any right to intervene because the architect's copyright has not been infringed.

If this situation is applied to the exhibition, we feel it would defeat the whole purpose of the licensing program as such, because we cannot control the millions of visitors who would come on the site and take photographs of the buildings, and of course we do not intend to do so.

However, right now we fear that some people would come on the site and photograph the buildings, and sell the photographs; whereas the corporation has granted to a licensee a licence to the effect of making the official post cards of the exhibition, and this person, the licensee, is paying us \$100,000 as a minimum royalty with a percentage on the sales. The contract that we have drafted is based on the existing legislation, but we feel that if the act is not amended, this licence and many others will be purely illusory, because anybody, without any permission from the corporation, could come on the site and photograph buildings and make postcards of them and we could do nothing unless they put on the postcard "Expo '67" or reproduced the symbol. On the postcard by itself, the corporation would be absolutely powerless. Our intention in this amendment is not to deprive the architects or designers of their copyright in the work. On the contrary, what we would like to suggest is that the copyright in each photograph taken on the site be vested in the corporation, but of course the ownership of the photograph would remain with the photographer. As a result, a person taking photographs for private use would not be bothered at all by the corporation, whereas people attempting to reproduce those photographs and make postcards out of them could be prosecuted by the corporation, having infringed the copyright of the corporation for commercial purposes.

Honourable senators, I told you about the postcard, the contract that we have concluded recently. A week or two ago we spotted a helicopter going over the site of the exhibition and taking photographs for the very purpose of making postcards. This could be done again when the site is completed. As a result, any licence that we would issue would be purely illusory, because one could obtain the same privileges without paying any money, the only difference being that he would not be entitled to use the symbol of the corporation—but, as you know, the visitor does not mind too much whether the symbol is on the postcard or not.

Senator PEARSON: Who takes out the injunction, the licensee or the corporation?

Mr. DELORME: In this case the corporation, because the copyright would be vested in the corporation.

Senator PEARSON: All the licensee would do is make the complaint?

Mr. DELORME: Yes, to us.

Senator ROEBUCK: It boils down to this, that you want to make a monopoly of the taking of pictures and use it commercially in order to make some revenue out of it. You are getting back to about the time of Queen Elizabeth, when legislation was passed against the formation of monopolies.

Mr. DELORME: It could be somewhat of a monopoly.

Senator ROEBUCK: What else is it? It is a monopoly of the taking and using of pictures commercially.

The CHAIRMAN: If you look at this aspect of it, the corporation has a mark—

Senator ROEBUCK: I am not talking about their mark.

The CHAIRMAN: That is what we are talking about.

Senator ROEBUCK: The witness says that if somebody flies over the exhibition and takes a picture of it and puts that on a postcard, the Corporation is going to have it stopped by legal means, with our approval. That is a common law right, to take a picture and use it. I do not care if it is of the exhibition or anything else.

The CHAIRMAN: Where does any person acquire the right? If I go to the Expo and hire a helicopter and then take pictures of the exhibition and put them on postcards, and sell them, what right have I offended?

Senator ROEBUCK: What right have I to stop you doing that? That is what he is seeking to do.

The CHAIRMAN: If you go into Expo to take a picture, an injunction proceedings could be taken against you if you do not put their mark on it?

Senator CROLL: Is not Expo a private place?

The CHAIRMAN: The whole site?

Senator CROLL: If I understand it, this is what he says. Forget the mark. We are agreed that a person should not use the mark. The Corporation has a perfect right to protect the mark. Let us get to Senator Roebuck's question. This is the common law of the right of a man to take a picture. He does not use any mark. He says that this is a series of pictures, this is what the exhibition looks like at first and this is the later picture. He puts them together and puts covers on them and sells them for 25 cents or 50 cents, and he says they are all Expo pictures. Someone then sends out those postcards. He does not really get to Expo. As far as he got was British Columbia, but he sends out Expo pictures to his children and grandchildren. That man is guilty?

Mr. DELORME: If you would allow me, Mr. Chairman, we do not want to deprive anyone of taking pictures of the Expo or of the buildings. What we want is to implement our licensing program.

Senator ROEBUCK: That is, to get its monopoly value.

Mr. DELORME: It is a six-month operation and unless this is done we might as well forget about the licensing program and the revenues. I understand your point and I think it has merit, but in my view the exhibition is something of a very exceptional nature. Although this in your opinion may be a monopoly, if you will look at the other side of the coin, you will realize that this is only for six months, for something most exceptional, and after all, for the benefit of the public in general.

Senator CROLL: Did the people in Belgium, in the case of their exhibition, do that?

Mr. DELORME: I have no information on that.

Senator CROLL: Or in New York?

Mr. DELORME: On this point, may I ask Mr. Hope to reply?

The CHAIRMAN: Yes.

Mr. Robert Hope, Legal Advisor, Canadian Corporation for 1967 World Exhibition: In New York an action was taken by the Fair corporation against an unsuccessful bidder for the contract to do postcards, who failed because his bid was not accepted. He then went out and tried to line up the individual pavilion owners and take photographs and make postcards of them. Of course, his postcards were much more competitive because he had not to pay a royalty. It is a very tight market. They went to law and the Fair got a judgment whereby the American courts held that there was a special proprietary interest in the world's fair site. It was not applied because section 17 of the copyright law creates a special exception. This case then went to appeal but it was settled out of court on the appeal. The court held that this was an extraordinary and short-lived affair, attended by so many millions, that these were not public buildings in the sense of the houses of Parliament which are there for a long time and of which everyone is entitled to take pictures.

There is another aspect of this. The photograph is the cheapest form of reproducing. The difficulty is not in postcards so much as in other things that

the licensee may make. There are such things as maps, either to be given away free to the public or to be sold as souvenirs. There are things beautifully prepared, showing the whole emplacement, that you nail on the wall. In fact, you take a photograph of an interesting pavilion and put it on an ashtray or on a T-shirt and on all sorts of such things.

We are trying to keep cheaper material off the market, so that the visitor who comes to the exhibition or to Montreal or to Canada, will buy the best there is, produced under rigidly controlled standards. That is why it is necessary to have this amendment. Otherwise, these pictures will appear not only on postcards, which is a very small part of the business, but you will find the Canadian pavilion on T-shirts and straw hats.

Senator CROLL: Will you be able to buy that T-shirt in Toronto from Eaton's, or anywhere outside of the Expo grounds?

Mr. DELORME: Yes.

Senator ROEBUCK: You can find a picture of this Parliament here on plates and saucers and that sort of thing. It is a common law right, well established. If this bill passes, we get the position that you cannot take a picture of this public institution, this Expo, in order that Expo may have a monopoly of granting a common law right. I do not like it.

Senator CROLL: I asked Senator Lang yesterday where this came from and he said it was original. I never saw it in legislation before. It seems to me that you could perhaps do the very same thing by making an example of the first person who violated this or who didn't have a contract. However that might take a little time, is that the problem?

Mr. HOPE: Well, certainly any remedy taken by way of injunction on a clear-cut right of action—any claim taken in the normal way in the courts for such an injunction would be useless because the normal procedural delays can take up to three or four years and maybe more, if there was enough money involved. When you include, senator, the summary conviction penalties for infringement, because it is already provided that it is an offence punishable on summary conviction, by retaining proper counsel and by appeals, the whole thing could be delayed until after the exposition was over.

Senator ISNOR: Which branch of your operation furnished this thought?

Mr. DELORME: This is a joint effort between the commercial concessions branch and the legal department and is supported by management.

Senator ISNOR: For the purpose of revenue?

Mr. DELORME: This is one element, but only one element in our consideration. Another element is that we feel, as Mr. Hope has expressed it, that the public has to be protected to a certain extent from all sorts of souvenirs and junk flooding the market without any control whatever.

Senator ROEBUCK: But they do not have to buy it if they do not want it.

The CHAIRMAN: There may be another aspect to this. This is government property and it may be a special kind of government property and it may be part of the protection and preservation of the worth of that property that certain means which may seem to be somewhat extraordinary had to be taken.

Senator ROEBUCK: If it is as I understand it to be, I wonder if they will accomplish their purpose. One of the very big factors in connection with an exposition of this kind is its popularity.

The CHAIRMAN: If a person has failed to get the right on some particular grounds but then tries to do what he wanted to do anyway, and so benefit from it, and if the public were told that action was being taken against him, I don't think they would stop coming to the fair because of that.

Senator BIRD: After all, the two governments have invested money in this and some protection should be there.

The CHAIRMAN: This is the type of protection they think would be helpful. And of course if we approve and pass this amendment to the bill, it does not guarantee that the operation will be successful.

Senator PEARSON: Does this bill go counter to the rights of the Province of Quebec in any way?

Mr. DELORME: No.

Senator PEARSON: What about the copyright laws?

The CHAIRMAN: That is a federal statute.

Senator McDONALD: It seems to me there is a great difference between St. Paul's Cathedral in London or the Parliament Buildings in London or the Parliament Buildings here and Expo '67. It was mentioned that Expo '67 will run for a few very short months, and I think that this will guard against the activities of some people who seem to want to take advantage of the public. I feel that if you leave this wide open that is exactly what will happen in Montreal. It seems to me that this is the first time that Canada has had an opportunity of selling herself to the world, and I think she is entitled to this protection. Surely to goodness the corporation can give their licensing adequate publicity without every Tom, Dick and Harry from Canada, the United States and all over the world trying to make a "quick buck."

The CHAIRMAN: If you are going to measure public interest and the right of the public in this matter, we can quite easily look through that, realizing that somebody from the United States or Europe who has not got a contract and has not been ready enough to offer enough money, comes in and does it anyway. It would not take me long to discover which public right I would follow.

There is a wording in here I do not understand. In the statutes the section presently reads as follows:

"(3) For the purposes of this section, a mark, word, abbreviation of a word, symbol, emblem, insignia or design shall be deemed to be applied to

(a) goods or wares, when it is marked on or on any package containing such goods or wares, and"

Mr. DELORME: When it is marked on the goods or wares.

The CHAIRMAN: As it stands you have "on" doing acrobatic stunts all up in the air. However, if you are satisfied with that, I am not going to let the shock to my grammatical sense interfere with it.

Now, in subsection (2) of this clause where you are adding the words repealing part of section 18A and adding a new one, this is an exception against the generality of the first part. Any further questions on that?

There seems to be no question on that, so would you like to go ahead with your explanation. I should tell the committee that not only was the original act passed in 1962-63 but there were amendments to it in 1963.

Senator CROLL: What do the amendments in 1963 contain, broadly?

The CHAIRMAN: They added section 18A which is now being further amended by the amendments we are talking about.

The principle involved in what we are discussing today was the principle involved in the amendments made in 1963. All we are doing is adding the underlined words which you will find in subclause (a) of clause 1 of this bill, but as to the basic principle we have already committed ourselves. Of course our hands are not tied and we can change from year to year. However, we have permitted the organization to go along on the basis that Parliament approves of

this course. It would seem strange if in 1966 when this is only one year away we should change the authority which we gave them back in 1963.

Senator ISNOR: I asked the witness as to the estimated amount of revenue which will derive from this, and he said, roughly speaking, \$500,000. It strikes me you are taking an unusual view of this. I have in mind a large number of concerns, particularly the British woollen mills, who send their symbol all over the world with the request that it should be used wherever possible. I wonder if the \$500,000 will offset the publicity which would otherwise be obtained by asking merchants and manufacturing concerns throughout Canada and elsewhere to use the symbol wherever possible when advertising.

Mr. DELORME: Yes, Mr. Chairman, I must say that the licensing program of the corporation is two-fold, the first part being what we call the promotional advertising, whereby we give institutions and business firms the right, without charge, of using our emblem. For instance, Air Canada has such permission, and many others throughout Canada. This is only beneficial to the corporation and no actual benefit is derived from the use of the symbol by the user himself. The other part is the commercial licensing. This includes items such as postcards, but also items like ashtrays, pens, flight bags and thousands of others, which items are resold to the public and, therefore, the user deriving a benefit pays a royalty to the corporation. There is no exclusiveness with respect to flight bags, ashtrays, pens and this type of souvenir. Therefore, anyone wishing to have a licence and pay a reasonable royalty is entitled to have our permission.

Senator SMITH (*Queens-Shelburne*): On the licensing that has already been done, I assume quite a lot has already been done as a result of bidding?

Mr. DELORME: Yes.

Senator SMITH (*Queens-Shelburne*): Is there anything in your contract, for example with regard to the licence holder for the right to publish postcards, that such postcards be printed in this country, or is that wide open to his choice?

Mr. DELORME: I would like, with your permission, Mr. Chairman, to refer that question to the one who drafted the contract.

Mr. HOPE: All the exclusive licensees are Canadian companies. For instance, in the case of the guide book and souvenir map there were a number of companies involved. It was awarded to Maclean-Hunter, which is 97 per cent Canadian-owned, and all the paper, printing, and so on. This is one of the very important requirements in granting any licence to anybody, whether it be exclusive or non-exclusive. In evaluating the bids when we call for public tenders, for instance, Benjamin News of Montreal are printing the postcards and distributing them because they are the biggest distributor in Canada of pocketbooks, postcards and this sort of thing. In certain fields certain types of processes simply cannot be done in Canada. In some instances, for example, 36 millimeter viewmasters, where you get stereoptic views, two and three dimensional views, they have been processed and were awarded to a Canadian firm.

Senator LANG: Are the postcards to be manufactured in Canada?

Mr. DELORME: Yes.

Senator LANG: I understand Benjamin News postcards are manufactured in Boston.

Mr. HOPE: A small part of the processing is done through Sawyer's in Boston, but the paper and printing is supplied by the Benjamin Company in Montreal.

Senator LANG: From what I understand, the volume of business produced by Expo would warrant a Canadian set-up to manufacture such slides in Canada. Sawyer's is on the west coast of the United States, is it not?

The CHAIRMAN: Well, you can lead people to water, but you cannot make them drink.

Mr. HOPE: In fact, there was no Canadian company—and there were public tender calls and notices published in the newspapers and so on, and an opportunity was given to Canadian entrepreneurs to come forward with a scheme, and we have been delighted. In fact, the licensee, the Montreal company of Bellevue Photo Labs, are currently trying to devise a form of slide and not use the Sawyer's one. The ordinary slides which come in a long strip and are pushed through the machine are being made and manufactured, and the photographs taken here in Canada.

Senator CROLL: It just strikes me, let us assume someone does not do a shoddy job but a real fine class imitation job—and we know they can do it outside of this country—even outside the North American continent—and it comes from Europe and sells to people all over the country, how are you going to get an injunction?

Mr. DELORME: As a matter of fact, it would not be possible to do this in a foreign country under this section, but the country in which this is most likely to happen is the United States, and we have already taken some protection at common law in the United States by registering our emblem and obtaining all the necessary protection that is afforded to the private citizen in the United States by the common law, but this is not the same type of protection.

Senator GOUIN: Mr. Chairman, you were asking if we had any other questions. First of all, it is very clear that copyright is a monopoly, the right to reproduce copies, and so on. As I understand it, the philosophy of this bill is that you would give the copyright to the Expo Corporation, but it would be for a limited period, probably six months. In these circumstances, and extraordinary circumstances, it is justifiable to protect in every way the Expo so that any reasonable profit which may be derived from the investment of money by the Canadian people will go to Expo. Several airlines have put on the market those small travelling bags, and they use the symbol of Expo and also the words, "Expo '67." I think. Would they be prohibited from doing so by the present bill?

Mr. DELORME: Mr. Senator, this particular licence you are talking of is one that was awarded to a firm specializing in that field, and with that licence they would have contracted with the airline companies, and this is not something that we would intend to change at this moment. Furthermore, we would continue on the same avenue in granting more licenses of that type, but they are of the commercial type with royalties to the corporation.

Senator GOUIN: I think it is a good advertisement for the Expo.

Mr. DELORME: Yes.

The CHAIRMAN: Are there any other questions, or would you like us to report the bill without amendment?

Senator ROEBUCK: Just before we do that, I have read section 18B a couple of times, but I am not sure I understand it. Say there is an "artistic work"—and I use the phrase in the first clause—and I take a photograph of it when it is on exhibition, then the copyright in the photograph belongs to the exhibition, does it?

The CHAIRMAN: That is right.

Senator ROEBUCK: Although I have taken it and it is my property? What about the artistic work itself? Is the copyright of the artistic work also appropriated by the exhibition?

The CHAIRMAN: For six months.

Mr. HOPE: No, pardon me, Mr. Chairman, it is only the reproduction.

Mr. DELORME: The copyright that is vested in the corporation is the copyright in the reproduction only. So the corporation would own the copyright in the photograph, and the photographer would own the photograph itself, and the author of the thing photographed would remain the owner of the copyright of the thing photographed itself. This would not expropriate anybody's copyright, except that of the one who takes the photograph.

The CHAIRMAN: As I understand the purpose of section 18B—and I think maybe I am still right—no matter who does this artistic work in reference to the site, identifiable on the site and located on the site, the ownership is vested in the corporation for a period of six months.

Section 18B provides:

For the purposes of and notwithstanding the Copyright Act, copyright in any model, painting, drawing, engraving, photograph or other reproduction

- (a) made of any artistic work, as defined in that Act, while that artistic work is located on the site of the Exhibition, or
- (b) made of the site of the Exhibition or of any part thereof, is hereby vested in the Corporation. . .

Now, if there is an original of the model or the original painting section 18B(1) would, during the period of six months, prevent the person who created it from making any copies or reproductions of it; is that correct?

Mr. DELORME: Yes, that is correct.

Mr. HOPE: For commercial purposes.

The CHAIRMAN: Yes. Of course, the amateur photographer can take all the pictures he wants.

Senator LANG: May I caution Mr. Delorme in the application of this section? The small Ontario community of Wawa is widely known because of a large statue of a Canada Goose. That statue was designed, and put up privately, by a resident of Wawa who attempted to prevent commercial reproduction of it, but he did not have the protection provided by section 18B. If he had had that protection then hundreds of thousands of people today would not know where Wawa is. I would ask Mr. Delorme to bear that in mind in applying the powers given to Expo by this section.

The CHAIRMAN: I would point out that we are talking of only six months here.

Is the committee ready for the question? Is it the wish of the committee that I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 25

Complete Proceedings on Bill C-207,

intituled: "An Act to authorize the making of contributions by Canada towards the cost of programs for the provision of assistance and welfare services to and in respect of persons in need".

TUESDAY, JULY 12, 1966

WITNESSES:

Department of National Health and Welfare: The Hon. Allan J. MacEachen, Minister; Dr. J. W. Willard, Deputy Minister, Welfare.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Leonard	Thorvaldson
Croll	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Davis	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McDonald	White
Fergusson	McKeen	Willis—(50)
Flynn	McLean	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, July 11, 1966:

"A Message was brought from the House of Commons by their Clerk with a Bill C-207, intituled: "An Act to authorize the making of contributions by Canada towards the cost of programs for the provision of assistance and welfare services to and in respect of persons in need", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Hugessen, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, July 12th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Burchill, Croll, Fergusson, Gouin, Haig, Hugessen, Irvine, Isnor, Kinley, Lang, Macdonald (*Cape Breton*), McCutcheon, McDonald, O'Leary (*Carleton*), Rattenbury and Thorvaldson. (22)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Haig it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-207.

Bill C-207, "An Act to authorize the making of contributions by Canada towards the cost of programs for the provision of assistance and welfare services to and in respect of persons in need", was read and considered.

The following witnesses were heard:

THE DEPARTMENT OF NATIONAL HEALTH AND WELFARE:

The Honourable Allan J. MacEachen, Minister.

Dr. J. W. Willard, Deputy Minister, Welfare.

On Motion of the Honourable Senator Croll it was Resolved to report the said Bill without amendment.

At 12.20 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, July 12th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill C-207, intituled: "An Act to authorize the making of contributions by Canada towards the cost of programs for the provision of assistance and welfare services to and in respect of persons in need", has in obedience to the order of reference of July 11th, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE
THE STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Tuesday, July 12, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill C-207, to authorize the making of contributions by Canada towards the cost of programs for the provision of assistance and welfare services to and in respect of persons in need, met this day at 11 a.m. to give consideration to the bill.

Senator Salter A. HAYDEN in the Chair.

The CHAIRMAN: I call the meeting to order. We have Bill C-207 before us for consideration this morning, and it is a bill in respect to which I think there should be a *Hansard* report of our proceedings.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: We have solid representation here this morning. The Minister of National Health and Welfare is present, and we are pleased to see him. He will have to leave quite soon, so perhaps we should commence with a preliminary statement by him so that he may be excused to return to his other tasks.

Also appearing before the committee are Dr. Joseph W. Willard, Deputy Minister of Welfare; Dr. R. B. Splane, Director General, Welfare Assistance and Services, and Mr. N. F. Cragg, Director, Unemployment Assistance Division.

Mr. Minister, would you care to mention some of the highlights of this bill?

Honourable Allan J. MacEachen, Minister of National Health and Welfare: Mr. Chairman, the purpose of the Canada Assistance Plan is to establish in co-operation with the provinces a new system of public assistance in Canada. We have at present several shared-cost programs with the provinces that are described as categorical programs, and which include old age assistance, disability allowances, blindness allowances and unemployment assistance.

Senator McCUTCHEON: You would not call those categorical programs, would you, Mr. Minister?

Hon. Mr. MACEachen: These are called, in the parlance, categorical programs.

Senator McCUTCHEON: I would think that the blindness and disability allowances—that is, the flat amounts—are categorical, but the supplements surely are not called categorical?

Hon. Mr. MACEachen: These existing programs of assistance for blindness, disability and old age are called categorical programs.

Senator McCUTCHEON: How do you define "categorical" then?

Hon. Mr. MACEACHEN: Well, presumably they are described as categorical programs because each of them is for a specific group or a specific category.

The CHAIRMAN: These are categories in which assistance is given.

Senator McCUTCHEON: I am sorry, Mr. Chairman, but as I understand the parlance of the social worker the allowance of \$75 a month for blind persons is a categorical payment, because that person has to demonstrate that he is blind. But I have never heard of a supplementary assistance that is subject to a means test called a categorical payment.

Hon. Mr. MACEACHEN: I think it is a matter of semantics. This is the expression that has been used.

Senator CROLL: Mr. Minister, that is not a new term. It has been in existence, to my knowledge, for many years. It is applied now and has been for some years in respect of programs in provinces that apply the needs test, such as Alberta and others. It has been used for five or six years.

The CHAIRMAN: We are not going to get sidetracked on the semantics, I hope. All I understood the minister to say was that this is a description of the benefits granted under certain statutes. Whether or not you quarrel with the language does not matter at all for the purpose of our consideration of this bill.

Senator McCUTCHEON: It does matter in that we must know what the minister means. That is all I want to know.

Hon. Mr. MACEACHEN: Mr. Chairman, the basic purpose of the Canada Assistance Plan is to develop a single, comprehensive system of public assistance in Canada, to replace, at the option of the provinces, the present categorical programs, or to merge the blindness allowance, the disability allowance and the old age assistance allowance into a single program.

Senator McCUTCHEON: Does that mean that the payment of \$75, that I call a categorical payment, to the blind is eliminated?

Hon. Mr. MACEACHEN: We make provision in the bill for the continuation by the provinces of their categorical programs, but we anticipate that in time most provinces will eliminate these categorical programs, and that the case load in these categorical programs will be transferred to the general public assistance program. Of course, the—

Senator McCUTCHEON: Just a moment. At the present time the provinces do not share, do they, in the first \$75 payment?

Hon. Mr. MACEACHEN: Oh, yes, they pay their share of the allowance for old age, disability, and for blindness; the ratio is 50:50 for the first two and 75:25 for the blindness pension. There is a sharing in all of these present programs. Of course, in each of these categorical programs the ceiling is \$75 a month, based on the means test principle. Under the Canada Assistance Plan the ceiling will be removed in so far as the federal law is concerned, and each individual will be given public assistance on the basis of his needs. The fact of the need is the important thing, rather than the cause of the need.

For example, at present under the system of disability allowances there is at least what many people regard as a severe medical test in order to qualify for the disability allowance. Under this new program the nature or the extent of the disability is not really crucial. It is the fact of need that is important, and this is one aspect of the program, namely, the basis for co-ordinating public assistance programs in Canada and merging them into one single program.

Senator McCUTCHEON: The limits on earnings will cease to apply? It will be a matter for the province to determine whether the need exists, no matter what the earnings are?

Hon. Mr. MACEACHEN: Yes, that is right. Obviously, there are major classifications of persons who may be in need, including the aged, the blind and

the disabled, but it is possible under this system for an employed person to receive assistance if there is a need to supplement the earnings of that individual for the purpose of providing an adequate basis of assistance.

Senator McCUTCHEON: In other words, it might encourage these people to supplement their incomes rather than to inhibit them?

Hon. Mr. MACEACHEN: Yes, this is quite possible.

Senator McDONALD: Mr. Minister, you are talking about need so far as the disability pension is concerned but are you talking about an individual's ability or his family's ability to earn a living? I am thinking of a case where a husband, as a result of a stroke or some other illness, is left with virtually no earning power. Under the act at present it is impossible to get a pension for that individual if his wife is working and earning a sufficient income to keep the family. This is a case where the husband has no earning power. Under the new act will it be possible for a totally disabled person so far as earning power is concerned to draw a pension regardless of what his wife's income may be?

Hon. Mr. MACEACHEN: The provincial administration will assess the family budget, and if assistance should be given in order to maintain the necessary family budget then assistance would be forthcoming in the case of that particular family in which there is a disabled person. The extent of the disability would not be relevant as it is now with the medical test. The only relevant thing is the fact of need.

Senator McDONALD: The great weakness as I see it in many cases, and I have had first-hand experience, is where the husband is disabled and his wife goes to work but she should be at home looking after her husband and family. If they took a pension their income would be much less than she received from working, but the family suffers on that account because the mother is not home where she belongs. My question is, why should a person be discriminated against because his wife is in good enough condition to go to work even when she neglects her family to some extent?

Hon. Mr. MACEACHEN: There is nothing in the Canada Assistance Plan which will force the wife to be employed, but if the fact is that she is employed then the administration will have to assess the total income of the family to determine whether an adequate level of assistance is necessary.

Senator McCUTCHEON: That is obvious from the definition of the new bill.

Senator KINLEY: I suppose if the woman's place is in the home and there was a case of need because she had to look after the family and not work, it would be only natural that her family would receive assistance?

Hon. Mr. MACEACHEN: The first point I wanted to make, Mr. Chairman, is that the purpose, or one of the purposes, of the Canada Assistance Plan is to integrate all these separate programs of the provinces and put them all on a uniform basis and provide a level of assistance without any ceiling imposed, determined by the needs of the family or individual.

I would just point out in passing that in the present categorical programs the ceiling of \$75 is such that the budget of the family is not taken into account in any shape or form.

The Canada Assistance Plan also provides federal sharing for the first time in mothers allowances programs. These at present, as you know are wholly supported by provincial governments, and this will bring the mothers' allowances program into the Canada Assistance plan, affecting 200,000 mothers and their children in Canada.

Senator McCUTCHEON: That is in addition. But supposing a province enters into an agreement and decides to put, say, every person in the one package. On a fifty-fifty sharing basis that means the federal Government would be paying a smaller proportion of the blind allowances than it has to do.

Hon. Mr. MACEachen: That is right.

Senator THORVALDSON: What is included in the words "categorical programs"? Does that include the programs where there is a contribution by the federal Government, such as the Old Age Assistance Plan and blind pensions, or does that include other programs such as mothers' allowances?

Hon. Mr. MACEachen: No, it does not.

Senator THORVALDSON: You limit the program to those present ones?

Hon. Mr. MACEachen: This is an expression that has been used to describe these programs.

Senator CROLL: That is, old age assistance, disability, unemployment assistance, and the blind. Is that all?

Hon. Mr. MACEachen: That is all, yes; and unemployment assistance is not regarded as a categorical program because it came later and has been used for general assistance.

Senator CROLL: So there are just three?

Hon. Mr. MACEachen: That is right.

Senator McCUTCHEON: You are including mothers' allowances in the unemployment assistance. Is that the way it is being taken care of?

Hon. Mr. MACEachen: It never was.

Senator McCUTCHEON: But from now on?

Hon. Mr. MACEachen: It will be part of the total of the Canada Assistance Plan.

Senator McCUTCHEON: Or if the person does not come under it, it will be taken care of under the Unemployment Insurance Act?

Hon. Mr. MACEachen: Yes.

Senator THORVALDSON: Mothers' allowances programs have been in existence in my province, for instance, for about 50 years. I would like to ask just how this plan will operate, how this bill will operate in regard to say a mother's allowance plan in a certain province where you have a mother getting say \$100 from the provincial government? What increase is she likely to get as a result of this plan or just how will it be done? What will be the chance of improving her lot?

Hon. Mr. MACEachen: Well, there will be no ceiling, no limit on what she can potentially receive under the Canada Assistance Plan. It will assist in two ways. In the first instance it will assist the provincial treasury by federal sharing of 50 per cent of the burden of mothers' allowances; but in so far as the mother and her family is concerned, the province will determine what the mother and her family requires, and after that determination is made—it may be \$150, or it may be any amount, then under this plan the federal Government will share 50 per cent. So in those cases where there have been limits prescribed these limits will disappear and the mother and her family will get what they need.

Senator THORVALDSON: Perhaps you could clarify one other point in regard to this. Let us take the case of a mother presently getting say \$100 from a province. Will this program under this act share in that payment or will that continue as a provincial payment? Will that be a provincial responsibility?

Hon. Mr. MACEachen: We will be sharing.

Senator THORVALDSON: You will be sharing.

Hon. Mr. MACEachen: Yes.

The CHAIRMAN: It is up to the province if it wants to continue.

Senator THORVALDSON: Is it proposed that the federal plan participate in that \$100 or will the federal plan participate only in an increase that the province is willing to give?

Hon. Mr. MACEACHEN: No, it will share in the total.

Senator MCCUTCHEON: It will share right in the first dollar?

Hon. Mr. MACEACHEN: Right in the first dollar.

Senator CAMERON: How will the plan relate to people on welfare?

Hon. Mr. MACEACHEN: It relates totally to them. I think it is really a welfare program, and all persons on what is described welfare will come under this umbrella.

Senator CAMERON: Let us assume that a municipality has "x" number of families on welfare, and some are of the third generation. Will this change affect them?

Hon. Mr. MACEACHEN: I don't think the fact that we are going to be putting more money out, or that the total payments to these individuals will be greater, is in itself going to alter that dependency cycle, as it has been described. However, we have in the bill a capacity to share in welfare services and we believe that the application of welfare services will do something to break the dependency cycle.

Senator MCCUTCHEON: The mere payment of money won't cure problems.

Hon. Mr. MACEACHEN: I do not think additional money in itself will do the job. This positive feature is in the Canada Assistance Plan for the first time in Canada.

Senator GOUIN: In the case of a woman receiving \$75 a month in virtue of the Old Age Security Act, is she excluded from receiving assistance by virtue of already receiving that amount?

Hon. Mr. MACEACHEN: A recipient of Old Age Security, which is not a shared program, as we all know, could be assisted under the Canada Assistance Plan if a provincial government determined that "x" number of dollars over and above the \$75 was needed. In that case we would share with the province in the supplement above the \$75 for a recipient of Old Age Security.

Senator MCCUTCHEON: Under Old Age Security today?

Hon. Mr. MACEACHEN: Under unemployment insurance.

The CHAIRMAN: Senator Burchill?

Senator BURCHILL: I am wondering what will happen with regard to administration in the event a province signs an agreement with the federal Government. Is it then the responsibility of the province to assess the needs?

Hon. Mr. MACEACHEN: Yes.

Senator BURCHILL: That is a matter of practical application and will be a difficult matter. I can see where difficulties could arise. Would the administration not require trained social workers to administer the plan in the way it is designed to be administered?

Hon. Mr. MACEACHEN: I agree, senator, that the success of this plan will depend greatly on the administration, on the qualifications of the persons dealing with people and their attitudes towards those people.

The CHAIRMAN: Senator Fergusson?

Senator FERGUSSON: I think my question is somewhat like that of Senator Burchill's. Would not a provincial government's complete authority and responsibility for determining when a person is in need make for uneven administration throughout Canada?

Hon. Mr. MACEACHEN: Well, the provinces will enter into agreements or we will sign agreements with the provinces. In these agreements the provinces will

undertake to provide for what is described in the bill as the basic requirements of individuals—food, shelter, clothing, fuel, utilities, household supplies and personal requirements. Therefore, in so far as the provision of these items is concerned, the provinces will be obliged under the agreements to provide for these.

Then there is an optional series of items which the provinces may include, at their own discretion. These items are covered in section 2(a) as care in a home for special care, travel and transportation, funerals and burials, health care services, prescribed welfare services purchased by or at the request of a provincially-approved agency, and comfort allowances and other prescribed needs of residents or patients in hospitals or other prescribed institutions.

The provinces will be obliged under the agreement to provide the basic requirements. For example, a province may submit items, and we will share 50 per cent of the cost of providing to any recipient all social assistance, health and care services, including the whole range of medical and surgical assistance, and so on.

Senator McCUTCHEON: In what section of the bill is that made mandatory—the section to which you have just referred, Mr. Minister, describing “assistance” as meaning all or any of the following. In other words, they can take them all or take one of them?

The CHAIRMAN: That is only the definition section.

Senator McCUTCHEON: Yes. I want to know where the mandatory provision is.

Hon. Mr. MACEachen: It is section 6(2) (a), which states that an agreement shall provide that the province:

will provide financial aid or other assistance to or in respect of any person in the province who is a person in need described in subparagraph (i) of paragraph (g) of section 2, in an amount or manner that takes into account his basic requirements;

Senator McCUTCHEON: Yes, but again Mr. Minister, that refers back to the definition of a person in need. It does not refer back to the definition of assistance. In other words, I see nothing mandatory here. Again, I am not complaining about that. It must be left to the individual provinces. I do not believe it is mandatory. Obviously, the needs of one province, or part of a province, would be different from those of another province.

The CHAIRMAN: And the cost, too.

Senator McCUTCHEON: And the cost; but, as I say, I see nothing in the bill to prescribe it.

Hon. Mr. MACEachen: The agreement shall provide that the province shall provide financial or other assistance.

Senator McCUTCHEON: In respect of persons defined in paragraph (g).

Hon. Mr. MACEachen: That is right. It says in an amount or manner that takes into account his basic requirements; and the basic requirements are defined in section 2(a) (i).

Senator McCUTCHEON: It looks as though it has to start with the province and if the province includes it the federal Government goes along with it.

Senator FERGUSON: If the province goes ahead as described here, the federal Government will participate in it.

Senator CAMERON: In order to get a measure of uniformity, has any provision been made for bringing social workers of the provinces and officials of the federal Government together in refresher courses across the country, to assist those entrusted with this kind of program?

Hon. Mr. MACEachen: As you know, we have had a number of meetings with provincial officials. There is broad agreement with the officials in the provinces with respect to the objectives of the Canada Assistance Plan. Under the welfare grants, we are assisting in the in-service training of social workers and we hope to be continuing that program. This is an important part of the program.

Senator CAMERON: I would think so. I have not heard of any of those courses being held anywhere, and it seems to me this is a very important element.

The CHAIRMAN: That will come.

Senator MACDONALD (*Cape Breton*): When the federal Government makes an agreement with a province, will the province be obliged to pay half and will they in turn make an agreement with the municipality whereby the municipality will pay its share?

Hon. Mr. MACEachen: What the provinces do is their business with respect to the 50 per cent. There are provinces, including Ontario, in which the administration of welfare is at the level of a municipality. Accordingly, the municipalities will determine the level of assistance. But there is a movement towards the integration of services at the provincial level.

Senator MACDONALD (*Cape Breton*): In Nova Scotia the province pays 16 $\frac{2}{3}$ and the municipality pays 33 $\frac{1}{3}$.

Senator CROLL: One of the serious weaknesses of the bill is its lack of uniformity. You have a sharing program with "have" provinces and "have not" provinces. The "have" provinces can be generous but the "have not" cannot be, so they have to be stingy. You have people of one province receiving an allowance under a means test, and in an adjoining province it is different.

Why did you not place a floor that would be applicable to all provinces, so that they could go beyond that if they wanted, but there would be a floor to make sure there was a basic meeting of requirements everywhere in Canada.

The CHAIRMAN: You mean, a ceiling.

Senator CROLL: A floor.

Hon. Mr. MACEachen: In a sense, this is one of the good features of the Canada Assistance Plan, that it takes into account the flexibility which the provinces need in order to determine the needs of individuals. A floor may not be very useful for application across the whole of Canada.

Senator McCUTCHEON: The danger is that the floor might become the ceiling.

The CHAIRMAN: That was my question.

Hon. Mr. MACEachen: The whole purpose of the effort was to get away from fixed means so that the needs of individuals could be met and the appropriate allowance paid to them. I appreciate the point you have in mind.

Senator CROLL: What flexibility has a "have not" province? What will flexibility do for it, if it has not got the money to match your grant? What good is it to them?

Hon. Mr. MACEachen: This brings us into another aspect of the plan. It had been suggested at the conference of ministers, especially by the Minister of Welfare for Nova Scotia, and he was supported in this by the ministers from the other Atlantic provinces, that we have a different formula of sharing for what you describe as the "have not" provinces. We considered that. We have at present a tax structure committee working with the provinces, and the job of that committee is to reach a solution to the general question of equalization, so that all provinces will have the necessary funds to discharge their obligations. For that reason, and because of the upcoming decision on this matter, we did

not think we ought to put in a special equalization factor in this bill for certain provinces.

Senator CROLL: Mr. Minister, if you had put in the factor of a per capita income plus say five years of what they normally spend in those categories, would you not have been able to find a medium there for guidance and in that way help the "have not" provinces?

Hon. Mr. MACEachen: Yes, of course, but we could have taken per capita income and reached a formula that would give more money under this plan to the less wealthy provinces. We could have done that, but the reason we did not do it is that we hoped to have a general equalization formula that will apply to all programs administered by provinces. We recognize the problem, undoubtedly, and the Tax Structure Committee is working on it at present.

Senator CROLL: On a less important bill, in my view, the matter of water resources, you gave the Atlantic provinces \$25 million extra, which everyone agreed with, and all that was moving under a formula, whatever formula was in mind. Here is a matter which reaches far more people and is far more important, yet it is not applicable to it.

Hon. Mr. MACEachen: The question really was whether we ought to have put in a special equalization formula in every particular bill we brought forward, or whether we ought to relate it to a general equalization formula that would assist the province in all their programs. We chose the latter. That is the answer.

Senator McCutcheon: Mr. Minister, Senator Fergusson and Senator Burchill touched upon the shortage of trained social workers, and I think by implication you agreed that such a shortage does in fact exist, and the effectiveness of the administration of this bill, as, indeed, of the present plans, depends to a large extent on the availability of an adequate supply of these persons. Having regard to that, have you given any consideration to adopting, with modifications, and I am not sticking to the figure they suggested which I think is low—have you given any consideration to adopting the recommendation of the Senate Committee on Aging, which if applied to the aged would probably take a good many hundreds of thousands of people off your case load and relieve your social workers and your administration to that extent?

Hon. Mr. MACEachen: Yes, we have been considering in the department, and the Government itself has been considering very seriously, the proposals made in the Senate Committee on Aging. I appreciate that if that proposal were adopted, or some variation of it, it would have the effect of removing that class of person from reliance upon the economic resources required to administer this bill. I hope later in the week to be able to say something about what that consideration has resulted in so far as a decision is concerned.

Senator McCutcheon: Whatever statement you may make, I would hope it will recognize the principle that if our administration of what I call a categorical program is put into effect, such as old age security where we only have to prove one or two facts that cannot be challenged—I don't have to go through a means test or a needs test—I am 65 and have lived in Canada for so many years, or I am 69 today and have lived in Canada for so many years—

Hon. Mr. MACEachen: But the Senate committee did propose a test.

Senator McCutcheon: Yes, a test which is quite simple. I filed my income tax return and my taxable income is below a certain figure, then you bring it up to that figure. I heard it suggested that that is not administratively very difficult, and I say that if the computers in the Department of National Revenue can keep track of everybody in this country who is employed and makes \$601 a year, or self-employed persons receiving \$801 a year or more, many of whom never file a tax return, then it is not an administrative impossibility. I am not

suggesting that the same figure should be used. I suggest it is too low. But we should try in all these plans to eliminate as much as possible the necessity for one individual to pass judgment on another. We would save our administrative resources and our resources in the field which are limited, and there would be a great body of persons who would never have to go to the welfare office.

The CHAIRMAN: It would also save money.

Senator McCUTCHEON: Yes, it would also save money. I think it is an accepted fact that there are people, particularly in the class of the aged, who would be eligible for old age assistance or unemployment assistance or whatever heading it comes under, if they applied, but who refuse to apply. That is a group we should not overlook. That is a group we can take care of by some method such as the Senate Committee on Aging recommended.

Senator O'LEARY (*Carleton*): In the case of an individual, say a married man with a family, who would refuse work available to him from a government program or otherwise, how do you assess his need, what do you do with his family and with him under this act?

Hon. Mr. MACEACHEN: Well, the need is there.

Senator O'LEARY (*Carleton*): Whether he works or not.

Hon. Mr. MACEACHEN: The need is there, certainly for his family, and it has to be met. But I think this person requires more than money. He requires some kind of motivation and maybe it is too much to expect that the welfare service aspect of this bill will do anything for people of that kind, but I think it is envisaged by proper counselling, by work activity programs, and so on, that we can increase both motivation and employability of individuals. If this person simply refuses to work, then I think we have to meet the need. I don't think we can start—

Senator MACDONALD (*Cape Breton*): May I suggest a very practical answer to that and tell you what would happen? What would happen would be that this individual would be brought up under the Criminal Code for non-support. That is what would actually happen.

Senator CROLL: I think Senator O'Leary has been referring to subsection (a) of section 3 on page 13. Does not this say for the first time in the history of this country that as of right he gets it by virtue of his being a member of the community?

Hon. Mr. MACEACHEN: Yes, I think the fact of need brings the assistance into operation. But I think we cannot stop there, and that we have to try to do something to rehabilitate this person who for one reason or another may not feel capable of going into the labour market. We have had this experience of a dependency feeling where from one generation to another, people are on welfare. I do not think we can call this a good bill unless it attempts to cope with this problem.

The CHAIRMAN: If you have a person who is physically able and who refuses to work, you would have to assess all the needs and one of them would be his need for work.

Hon. Mr. MACEACHEN: Yes.

The CHAIRMAN: Yet we have no way of getting at him in this bill, unless the province imposes some restriction.

Senator ISNOR: That percentage would be very, very small, would it not?

Senator CROLL: It is trivial.

The CHAIRMAN: I am not sure.

Senator McCUTCHEON: Continuing to refer to work activity projects, looking at the definition in section 14 (a) one sees that these projects are going to be shared on a 50-50 basis with the provinces. Does that cut across the

Technical and Vocational Training Act at all? You use the terms "technical and vocational training" here and there, and already there is a separate training program. My recollection is that the federal Government takes more than 50 per cent of the cost of that program. Should that be clarified? I am sure you are not suggesting you are going to reduce your contribution under the Technical and Vocational Training Act?

Hon. Mr. MACEACHEN: No, we are not going to reduce it.

Senator McCUTCHEON: What does this mean then, when you use the identical term in here with reference to 50-50 sharing?

Hon. Mr. MACEACHEN: This is a new thing for this country, a work activity project. We hope to work out projects with the provinces that will be, in their first stages, experimental. We have in mind people who, because of family circumstances or individual problems, feel incapable of competing on the labour market or going out to work. We will try to develop, in collaboration with the provinces, projects which would restore, we hope, the work habits and interests of individuals in this category. This has been tried in the United States and in Britain, and we hope to try it in Canada. It is purely experimental.

We have also in mind people who are retarded and who, through sheltered workshops, might be able at least to earn part of their livelihood in these workshops. These are two aspects of the program. Do you want to add anything to that, Dr. Willard?

Dr. WILLARD: No, I think you have covered it, Mr. Minister. The idea is to bring this up to where the vocational training and vocational rehabilitation program starts, so that if a person could go right into vocational rehabilitation and vocational training, they would. This is to try to develop motivation, to try to develop work habits, and to try to prepare them for vocational training and vocational rehabilitation.

Senator McCUTCHEON: I appreciate the intent, but I suggest, Mr. Chairman, some doubt might easily arise by reason of the fact these particular terms should be clarified, perhaps by specific reference to the other program and a disclaimer of any intention to cut across that program.

The CHAIRMAN: Regulations might clarify it.

Hon. Mr. MACEACHEN: The Minister of National Health and Welfare will have to consult with the Minister of Manpower and Immigration before he can enter into an agreement under this Part, and any agreement has to be approved by the Governor in Council. So, there is some basis there for co-ordinating. But we do not intend to undercut or overlap what is being done now by the vocational rehabilitation.

Senator THORVALDSON: Is it possible to distinguish or give an example of what would be a work activity project with reference to there having been experiments on this in the U.S. and U.K.? Could you or your officials give an example of what a work activity project would be? Would it be a factory or workshop, or something that is established that is new?

Hon. Mr. MACEACHEN: It could be.

Dr. WILLARD: One example is Brady House in London, which is administered by the National Assistance Board.

Senator CROLL: In England?

Dr. WILLARD: Yes, and they have a number of re-establishment centres. These places take people who have been out of work for a very long time, who have lost the desire and motivation to work. Some do not even know how to present themselves to an employer to get a job. They get them in there doing certain specific types of work. They look after personal grooming. They discuss with them how to approach an employer, and provide counselling. They tie this

in with casting for possible vocational training, if that is indicated. They try to have as quick a turnover as possible to get this person into a vocational training situation or into a job.

In the United States they have a number of these projects operating. I visited one in New York City where they worked out a system which had a bit of vocational training along with the motivational kind of thing. These were teenage girls who had been dropouts, who had left about public school time, and they developed with the garment workers a system whereby they would try and obtain jobs for these people in due course. These girls would come in and work on different types of sewing machines, but while they were doing this they were learning basic language requirements, good grooming and how to get out into the world. In about six or eight months time these girls would be placed in jobs. The result of this experiment was very good.

Another example was where they operated a service station 24 hours a day and brought in lads who had been dropouts. They learned their trade and had a tie-in with other service stations and with the actual mechanical side, where they could move in and get further training. In the first instance, they took boys who did not know what they wanted to do, or did not have any motivation to work, and they got them interested in this and got them going. They worked out a system of further training after they were through this initial period. There is a wide variety of projects of this type, where they tie in with vocational training and vocational rehabilitation.

Our thought here was that we would have an interdepartmental committee with the officials from the vocational training and vocational rehabilitation program, and when the projects came in from the provinces we would sit down and see whether we could work this right into the vocational training, or whether we could tie it in as an interim step.

Senator McCUTCHEON: Would this go so far as to include sheltered workshops, where persons might work for long periods?

Hon. Mr. MacEACHEN: Yes.

Senator CROLL: Did you not forget to mention the experiment that has been going on in Toronto in this field for some time?

Dr. WILLARD: There are many examples in Canada of sheltered workshops.

Senator CROLL: No, I am talking about vocational training schemes.

Dr. WILLARD: We have straight vocational training programs where there is no problem of motivation, where people are counselled as to what field of vocation they should receive their training in, and then they move into it. We have many examples of this going on. They try to build an activity program for people who have been out of work for a long time, who may not be ready to move right into vocational training and may need some period of time of very considerable welfare service. This is so not only in relation to the breadwinner but in relation to the whole family, if it is a multi-problem family in which the breakdown, as it were, with regard to the breadwinner being employed is related to other situations in the family involving the wife, children, and so forth.

The CHAIRMAN: You were talking of people who do not know how to work but might be interested in working?

Dr. WILLARD: Yes.

The CHAIRMAN: We were thinking earlier about people who are able to work but will not work.

Dr. WILLARD: I think in many cases there is a background of psychological blockages, perhaps related to alcoholism or some family situation. If you are going to rehabilitate that person you may have a whole social rehabilitation

project to work on before you can be helpful in relation to the employment situation.

Senator McCUTCHEON: Just to change the subject for a moment. I would like to refer to clause 19 of the bill on page 15. I take it that clause applies only to the Province of Quebec. It provides for an increased abatement to compensate for the additional sharing that you contemplate otherwise would take place under Part I. But there is no obligation on the province—I am not asking a question, but am making a statement—to extend its present programs. This is an abatement favouring the Province of Quebec, with no corresponding obligation to carry out the intent of Part I of this bill. Is that right?

Hon. Mr. MACEachen: Well, the clause provides for the application of the Established Programs (Interim Arrangements) Act to the Canada Assistance Plan, and Quebec, if it signs an agreement with us, will be obligated to carry out the provisions of the bill.

Senator MACDONALD (Cape Breton): I wonder if the minister would turn to clause 5 on page 5, headed "Contributions," and say a word about that. I find it difficult to follow.

Hon. Mr. MACEachen: That provides for 50 per cent of the cost to the province and to the municipalities of the general assistance, and then there are two options. The province may select either of two options with respect to its method of claiming reimbursement or sharing for welfare services. The 50 per cent will still prevail, but in one case we will share on the basis of the increase in staff that has taken place at a cut-off point, and the second option is that we will share on a 50 per cent basis in the additional costs over and above those established in a base period. One is sharing after the cut-off point—that is, 50 per cent of the extra amount after the cut-off point—and the other is a sharing in the extra amounts over and above those that have been established in a base period.

The reason why we have put that in is that one or two provinces wanted to have a more simple method than that of examining what has happened over the base period. Any province can choose whichever method they want.

The CHAIRMAN: Do you mean actual or average over the period?

Hon. Mr. MACEachen: I think that is about it.

Senator THORVALDSON: I think that that is the question I asked in respect of a specific program, and I thought the answer was that in regard to mothers' allowance, for instance, where a province pays, say, \$100 to a mother, you would pay a part of that \$100, whereas if it had been—

Hon. Mr. MACEachen: Yes. This applies really to increased costs. We are trying to provide an incentive in the Canada Assistance Plan to the provinces to increase their staffs, and we are saying that we will pay them 50 per cent of the cost of the additional staff they take on either after a certain cut-off point, or in comparison with what they had over a base period. This sharing of the incremental costs does not apply to assistance, but only to administration and staff costs.

Senator CROLL: Mr. Minister, there has been some talk—and I would like your opinion on this—about free loading, and that sort of thing. My own experience is that the number of people who can work but who will not work is an infinitesimal percentage of the total number who receive assistance. Over the period of years the department has had experience in this, and I am wondering what it has been.

Dr. WILLARD: Mr. Chairman, it is difficult at the federal level to make an assessment of this because we do not deal directly with the recipients. However, I would say from discussions we have had with various officials that Senator Croll's assessment is correct. Certainly, if you take these programs generally

you will find that approximately 55,000 people receive benefits under the total disability program, and nobody can say that those people are in any way freeloaders. There are over 8,000 receiving assistance under the blindness allowance program. Under the old age assistance program, before we started to lower the age, there were about 102,000 people, and that number represented about 20 per cent of the people in the age group from 65 to 69. I think any income study would certainly show that these people were in need.

Many of the 600,000 receiving general assistance are children and dependents. Therefore, while the total number is large, when you get down to the actual number of breadwinners you will find it is not so high. While we are not sharing in respect of our mothers' allowances, I would point out that many of the people included in those statistics as receiving allowance are mothers and children. We know that there are about 200,000 mothers with dependent children under the mothers' allowance program, and these are mothers of families the breadwinners of which have died or are completely disabled. Here we know that they have met the test of need.

So, when you start to break down these statistics and look at them you are driven to the conclusion that there can be nothing but a very, very high percentage of these people who are really in need and who really need income support.

Senator O'LEARY (*Carleton*): Did not the Gill Report on Unemployment Insurance suggest a rather different picture from that suggested by Senator Croll? As I recall it, they reported a loss of over \$1 million in one year in payments that should not have been made, and then noted that this applied to cases that had been detected.

Dr. WILLARD: Senator O'Leary's point refers to a social insurance measure—

Senator O'LEARY (*Carleton*): These are people who want something for nothing.

Dr. WILLARD: Yes, but I am referring to people on social assistance. All the people to whom I am referring have met a means test or a needs test, whereas the people to whom you refer are people who receive benefits under a social insurance program.

Senator McCUTCHEON: Benefits to which they are not entitled.

Senator THORVALDSON: It is much easier to freeload under the Unemployment Insurance Act than under these various social programs. The provincial social worker is a well trained person, and he has a much better opportunity of preventing that kind of thing.

The CHAIRMAN: It is a question of whether freeloading is the right word to use in connection with unemployment insurance. After all, they have paid something in.

Senator CROLL: I used the word "freeloading" because it has been used previously. I disassociate myself from the term. However, I think I should say to Senator O'Leary that under the system he is talking about those people were contributors who felt that they had some right to the money. Some of them even went to the trouble of getting pregnant in order to receive the money.

The CHAIRMAN: They wanted the money back.

Senator McCUTCHEON: Any insurance scheme is fair game.

Senator BURCHILL: Under this scheme if the "have-not" provinces—and you will know what I mean by that term—sign up and carry out their responsibilities as you see them under this act, then it is going to cost them more money that at present, is it not? Your answer to that is that the equalization grants given to these provinces will be used for this purpose. Is my understanding correct?

Hon. Mr. MACEachen: Yes, my answer is that instead of putting an equalization factor in this bill we have determined that the total equalization settlement ought to apply to all services. But, in addition to that the provinces are going to be saving 50 per cent of the mothers' allowances. They are going to be saving—

Senator BURCHILL: But, on the whole, it will cost them more money?

Hon. Mr. MACEachen: Yes, but all that they have been putting into old age assistance will disappear as the age is reduced over the next few years. Soon they will not be contributing anything to old age assistance, and the provinces will save about \$255 million simply because the federal Government has reduced the age for old age security payments from 70 to 65 over the period of the next five years.

Senator McCUTCHEON: You are not suggesting that a person in receipt of old age security payments may not also be entitled to assistance under this bill?

Hon. Mr. MACEachen: No, no.

Senator Croft: If you are going to spend \$85 million, then somebody else is going to spend \$85 million.

Hon. Mr. MACEachen: Yes, but I am meeting the point made by Senator Burchill, namely, that there are some inherent savings to the provinces.

The CHAIRMAN: Yes, 50 per cent really of what the provinces are presently laying out for these services.

Senator McCUTCHEON: For certain services.

The CHAIRMAN: Are there any other questions? Shall I report the bill?

Senator McCUTCHEON: I should like to pursue that question with the minister as to what are the obligations on the Province of Quebec if, as I assume it will, it should take advantage of the provisions under section 19?

Hon. Mr. MACEachen: I begin by saying that there will have to be agreements with the provinces to give effect to this bill.

Senator McCUTCHEON: No. Section 19 obviously applies only to the Province of Quebec. What is the obligation on the Province of Quebec in return for the two extra points of abatement that will be given?

Hon. Mr. MACEachen: I do not understand what kind of obligation you have in mind.

Senator McCUTCHEON: Is the Province of Quebec obligated to spend a single extra nickel?

Hon. Mr. MACEachen: Oh, sure it is

Senator McCUTCHEON: Why?

Hon. Mr. MACEachen: You mean over the five-year period?

Senator McCUTCHEON: Over the period to April 1, 1970.

Hon. Mr. MACEachen: Well, of course.

Senator McCUTCHEON: I am not convinced that it is.

Hon. Mr. MACEachen: Senator, this is related to the Established Programs (Interim Arrangements) Act. Schedule I of that act enumerates the various programs; it is a schedule of programs. Section 3 of that act says:

Where a province that is participating in a program enumerated in Schedule I desires to have that program become a program that is to be wholly administered and financed by the province, . .

It would "enter into a supplementary agreement." then clause 2 reads:

A supplementary agreement shall contain an undertaking by the province that the province shall continue to operate the program in accordance with the authorizing instrument except as to the manner in

which the Government of Canada will contribute thereafter in respect of the program and the manner in which accounts are to be submitted.

My point is that the obligation on the Province of Quebec is to continue the program.

Senator McCUTCHEON: That is its present obligation?

Hon. Mr. MACEACHEN: Yes, and will be under this supplementary agreement mentioned in this other bill, and that obligation will exist in return for the arrangements that are contained in clause 19.

Senator McCUTCHEON: I am just looking at the terms of the agreement. The Province of Quebec must sign an agreement to obtain the abatement. Basic requirements are provided as defined here. It provides for a needs tests, which is indistinguishable from a means test, but provides a nicer word.

Hon. Mr. MACEACHEN: I disagree with that.

Senator McCUTCHEON: I know you would disagree with that, but that is my view. My submission is that there is no way in which an extension of services, let us put it that way, an extension of financial assistance, or whether or not financial assistance has been extended, can be determined. The province says, for example, "We are already providing shelter, food, clothing and personal requirements, and we will continue to do that. Our means test is substantially your needs test." In the case of the other provinces you will know what is being done from the bills you will have to pay. In this case, I do not think you will.

Senator CROLL: Why do you say "by the bills you will have to pay"? They can examine what is going on in the ordinary way, can they not?

Senator McCUTCHEON: The Province of Quebec would be administering exclusively and getting a tax abatement for it.

Senator CROLL: Whether it is high or low.

Senator McCUTCHEON: Whether it is high or low; that is my whole point.

Senator CROLL: Don't they have to prove their right to the abatement of two points, up or down?

Senator McCUTCHEON: Not under the bill.

Dr. WILLARD: The agreement the Province of Quebec has signed will be the same as the other provinces. It would carry out the same undertakings. With regard to the interim arrangements act this goes back to the original act and to the section the minister read. It says in effect that they will carry out this agreement, everything; the only difference is in the method of payment. The method of payment will be these four points, plus whatever overage there is not covered by this point which will be a direct payment. In order to arrive at that payment we will have to have certified accounts showing that money had been spent.

Senator McCUTCHEON: That is from the provinces?

Dr. WILLARD: From the provinces.

Senator McCUTCHEON: The provinces with whom you are sharing.

Dr. WILLARD: That is correct.

Senator McCUTCHEON: I am talking about the province to whom you are giving a tax abatement.

Dr. WILLARD: I am talking about under the interim arrangements act.

The CHAIRMAN: And that is Quebec?

Dr. WILLARD: Yes. Of the total amount the Province of Quebec might get under this program there would be about \$80 million, according to our estimate at this point. Of that four points would cover about \$44 million. The balance would be a straight payment which tallies up what they have paid for these

actual programs in accordance with the agreement and what the four points provided. Now, if the four points provided say \$44 million we will have to make them up to \$80 million by a straight payment from the finance department which are not covered by the four points.

I would point out, that in the previous act there were two points for the unemployment assistance program and two points were for the categorical programs. This has combined it in four points for the five programs, unemployment insurance, the three categorical programs and Canadian Assistance. So for any programs that continued, the whole five would operate under this situation. If unemployment insurance disappeared it would refer to the four. Old Age Assistance will of course disappear in 1970 and will be one less.

Senator McCUTCHEON: Old Age Assistance surely will disappear in 1970.

Dr. WILLARD: Yes, it will disappear.

Senator McCUTCHEON: But the right under this act to obtain further assistance even though you are drawing Old Age Security will not terminate in 1970.

The CHAIRMAN: The right in whom, an individual?

Senator McCUTCHEON: A private individual.

Dr. WILLARD: This act will continue as long as there are agreements related thereto.

Senator McCUTCHEON: That is right.

The CHAIRMAN: Are you ready for the question?

Hon. SENATORS: Question.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

Whereupon the committee adjourned.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 26

*Complete Proceedings on Bill C-216,
intituled: "An Act to amend the Income Tax Act".*

THURSDAY, JULY 14, 1966

WITNESSES:

Department of Finance: The Honourable Mitchell Sharp, Minister; F. R. Irwin, Director, Taxation; *Department of National Revenue:* Arthur L. DeWolf, Legal Branch; D. R. Pook, Chief Technical Officer, Assessment Branch.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Leonard	Thorvaldson
Croll	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Davis	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McDonald	White
Fergusson	McKeen	Willis—(50)
Flynn	McLean	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, July 13, 1966:

"A Message was brought from the House of Commons by their Clerk with a Bill C-216, intituled: "An Act to amend the Income Tax Act", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Vaillancourt, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Vaillancourt, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, July 14th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Baird, Beaubien (*Provencher*), Blois, Burchill, Croll, Gouin, Haig, Hugessen, Irvine, Isnor, Kinley, Lang, Leonard, McCutcheon, McLean, Pearson, Rattenbury, Thorvaldson, Vaillancourt and Walker. (23)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Haig it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-216.

Bill C-216, "An Act to amend the Income Tax Act", was read and considered.

The following witnesses were heard:

DEPARTMENT OF FINANCE:

F. R. Irwin, Director, Taxation.

DEPARTMENT OF NATIONAL REVENUE:

Arthur L. DeWolf, Legal Branch.

D. R. Pook, Chief Technical Officer, Assessment Branch.

At 10.25 a.m. the Committee adjourned.

At 12 noon the Committee resumed.

Bill C-216 was further considered.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Baird, Beaubien (*Provencher*), Blois, Bourget, Brooks, Burchill, Choquette, Croll, Dessureault, Gouin, Haig, Hugessen, Irvine, Isnor, Kinley, Lang, Leonard, Macdonald (*Brantford*), McCutcheon, McDonald, McLean, Rattenbury, Thorvaldson, Vaillancourt and Walker. (27)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witness was heard:

DEPARTMENT OF FINANCE:

The Honourable Mitchell Sharp, Minister.

On Motion of the Honourable Senator Walker it was Resolved to report the said Bill without amendment.

At 12.40 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, July 14th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill C-216, intituled: "An Act to amend the Income Tax Act", has in obedience to the order of reference of July 13th, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, July 14, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill C-216, to amend the Income Tax Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator SALTER A. HAYDEN in the Chair.

The CHAIRMAN: I call the meeting to order. We have before us Bill C-216 for consideration this morning. May I have the usual motion for the printing of the proceedings?

The Committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: There is not available a full supply of copies of this bill as passed by the House of Commons, but honourable senators did have copies last evening in the chamber, and I hope they have been thoughtful enough to bring them with them. It is only the numbering of the clauses in the original bill that is different; the contents are the same, and I think they can be identified in the original printing as we go along.

Appearing before the committee this morning are Mr. F. R. Irwin, who is the Director of the Tax Policy Division in the Department of Finance, and Mr. A. L. DeWolf—

Mr. A. L. DeWolf, Tax Counsel Department of National Revenue: Mr. Chairman, I am here just as an observer, and not a witness. Mr. MacLachy is coming, and Mr. Pook is here.

Senator McCUTCHEON: Where is the minister?

The CHAIRMAN: I do not know.

Senator McCUTCHEON: Has he been requested to come?

The CHAIRMAN: Mr. Wylie is looking after that.

Senator McCUTCHEON: You are the chairman. You can tell us whether he was requested to come.

The CHAIRMAN: I suppose the quickest way of dealing with the bill is by going through it clause by clause. Section 1 is found on page 2 of the bill. Would you care to summarize that briefly, Mr. Irwin?

Mr. F. R. Irwin, Director, Tax Policy Division, Department of Finance: Yes, Mr. Chairman. This section makes an amendment to that part of the act which deals with the deduction for tuition fees. The changes are sidelined and underlined. The purpose of this amendment is rather technical. It is designed to prevent what might otherwise be a double deduction.

Senator McCUTCHEON: It does not let you have your cake and eat it.

The CHAIRMAN: Of course, some people try to do that. It is nice work if you can do it.

Senator McCUTCHEON: Yes, but that prevents it in this case.

The CHAIRMAN: At least, it shuts off. That is about the sum and substance of it, is it not?

Mr. IRWIN: Yes, sir.

The CHAIRMAN: Section 3 (2) of the bill is found about half way down page 3, and it now becomes section 2.

Mr. IRWIN: This amendment, Mr. Chairman, will add to the definition of "proceeds of disposition". The amendment is necessary because the present law does not make clear what should be regarded as proceeds of disposition when a taxpayer's property has been disposed of by reason of foreclosure and the amount of the taxpayer's liability under the mortgage has been reduced.

I might explain that this has relevancy because the law provides for recapture of excess capital cost allowances, or a terminal loss, when a depreciable asset has been disposed of. It might happen that a taxpayer's property has been foreclosed and the owner's liability under the mortgage is substantially reduced. As a result he has, in fact, received "proceeds of disposition". This amendment is necessary to determine the amount of the terminal loss that should be paid to the taxpayer, or possibly to determine the amount of recapture of cost allowance.

Senator LEONARD: He loses his property and has to pay back taxes that can now be deemed to be owing?

Mr. IRWIN: I do not think it is quite as bad as that sounds.

Senator McCUTCHEON: If it made a very good mortgage that would be the case.

Senator LEONARD: The depreciation is gone by reason of the loss on the—

The CHAIRMAN: Let us look at it the other way. If the property is sold for enough to take care of the liability and to show something as against the recapture that he has done while he was the owner and operating it, they say to the extent it will provide for recapture, why there is recapture.

Senator LEONARD: This is where the liability has been reduced, so it would not be a case where the property has been sold for the amount of the liability.

Senator McCUTCHEON: That is a matter of arithmetic.

The CHAIRMAN: Yes.

Senator McCUTCHEON: I suspect that there are a number of apartment houses in Toronto which have been foreclosed and there was a capital gain.

The CHAIRMAN: Take a simple illustration of this.

Mr. IRWIN: One might take a rather extreme example. Let us suppose a property had cost \$100 and had been written down for tax purposes to \$25, that there was a mortgage against it for \$75, and the taxpayer had never arranged to pay anything off the mortgage, and then he said to the person who loaned the mortgage, "Take the property and pay me \$30."

Senator LEONARD: You cannot pay him \$30, because he owed \$75.

Mr. IRWIN: Well, he has got the property.

Senator LEONARD: He loses the property?

Mr. IRWIN: Yes.

Senator LEONARD: Then he must pay back in depreciation what he was entitled to between the cost of the one and the other?

Mr. IRWIN: Well, in my example there would be a recapture of allowance of \$45.

Senator LEONARD: The depreciation allowed would be the difference between \$100 and \$25. He loses the property and has to pay back in depreciation, which presumably has gone against the revenue of the property, and there may not have been any revenue. It seems to be a bit severe.

D. R. Pook, Chief Technical Officer, Assessment Branch, Department of Finance: In this example it cost him \$100, and \$100 is set off, and this is what the man has been writing off against his income.

Senator McCUTCHEON: He does not have to write it off unless he has income to offset.

The CHAIRMAN: No, but we assume he has income. If he does not do any write-off, he has no recapture.

Senator McCUTCHEON: I quite agree. But assuming he is a prudent businessman, he makes no write-off on his books unless he has at least some income equivalent.

Mr. POOK: That would be the normal procedure.

Senator THORVALDSON: May I ask Mr. Irwin and Mr. Pook if there is a factual reason for this legislation? In other words, is there a practical and present abuse that is being met by this legislation?

Mr. POOK: Certainly there is uncertainty about what the results are. There is nothing in the law which says or makes clear what the dispositions are.

Senator McCUTCHEON: What you are saying in this legislation, Mr. Pook, is that foreclosure of a mortgage is deemed to be a sale.

Senator LEONARD: At the amount of the mortgage.

Mr. POOK: At whatever the price is. This may be the amount on mortgage—whatever liability the man has.

Senator LEONARD: Has the property not depreciated between his book value and what he loses it at? In fact, he loses it.

Mr. POOK: He may have written it down further than that.

Senator LEONARD: Well, if he has written it down further than that, do you not have to go further than the amount of the mortgage to ascertain what the real value of the property is?

The CHAIRMAN: The real value has nothing to do with recapture. It is what is the realizable value either on the sale of the mortgage or under the foreclosure. I suppose under the foreclosure it would be what amount of money he might pay and redeem the mortgage.

Senator LEONARD: In the first place, does this allow him the loss between the amount of the book value and the amount of the mortgage?

The CHAIRMAN: He might have a terminal loss.

Mr. POOK: The other provisions in section 20 and the regulations provide various adjustments when properties are disposed of so that the taxpayer gets his actual cost. In other words, if he buys a piece of property at \$100 and in the end only pays \$25 for it for the reason that the other \$75 never gets paid, then his actual cost is \$25; and if he has written off more than \$25 part of it will be recaptured, and if it is less he will be allowed the terminal loss.

Senator McCUTCHEON: In other words, if he had a property costed on his books at \$100, a depreciable property without the land aspect, and the mortgage was \$75, and had never written off the depreciable assets, the mortgage is foreclosed, he has a loss of \$25 which he will be allowed if he has other depreciable assets to offset this. Putting it the other way, if he is down to \$60, and has foreclosed at \$75, he may be charged recapture depreciation on \$15.

Mr. POOK: That is right senator.

The CHAIRMAN: Either \$15 or the amount of the depreciation if it is less than that.

Senator McCUTCHEON: Yes.

The CHAIRMAN: The next is section 3 on page 7 of the bill, dealing with registered Canadian charitable organizations.

Senator McCUTCHEON: Carried.

Senator HAIG: Mr. Chairman, does that mean that any of these organizations have to apply for registration, such as a church organization?

The CHAIRMAN: Yes, that is correct.

Senator McCUTCHEON: Any charitable organization, a foundation, educational institution, as I understand it, all have to apply for registration.

The CHAIRMAN: That is right. The next is section 4 on page 9. What have you to say about that, Mr. Irwin.

Senator McCUTCHEON: I think the less the better.

The CHAIRMAN: I think the general public would say their taxes are being increased.

Mr. IRWIN: This reduces substantially what has been referred to as the 1965 tax reduction.

The CHAIRMAN: It took all the feathers off the bird.

Senator McCUTCHEON: I revert to my original question. I have no desire to discuss this with the officials. What this section does is perfectly obvious. Is the minister going to appear before the committee?

The CHAIRMAN: I have sent a message. He is in Cabinet. We will have an answer in a few minutes.

Senator McCUTCHEON: If he does come, I wish to revert to it.

Senator THORVALDSON: Is there an estimate of the amount of dollars that will accrue in additional revenue as a result of this change?

The CHAIRMAN: I think I mentioned last night that for a full year it deprives the revenue of about \$210 million.

Senator THORVALDSON: That is, the revenue will be increased by that amount?

The CHAIRMAN: The revenue will increase by about \$115 million as against the Gordon formula.

Senator HUGESSEN: So there is \$95 million benefit to the taxpayer?

Mr. IRWIN: The estimated cost of what we call the \$965 tax cut, if it had been allowed to continue, is about \$325 million. Because of the changes made here, revenues will be increased in 1966-67 by \$140 million.

Senator McCUTCHEON: That is only part of the year?

Mr. IRWIN: Yes.

Senator McCUTCHEON: What is the full year?

Mr. IRWIN: That is 1966-67, because in 1966-67 there is a composite rate between the 1965 reduction and the new reduction.

Senator McCUTCHEON: What is it in a full year?

Mr. IRWIN: In a full year, \$210 million.

Senator McCUTCHEON: Thank you.

The CHAIRMAN: So the revenues are being increased by this change by \$115 million in a full year. It is carried?

Senator McCUTCHEON: Subject to reverting.

The CHAIRMAN: That is on the record. Section 5, at the bottom of page 9 and the top of page 10. Yes, Mr. Irwin?

Mr. IRWIN: This is a relieving amendment. The section 64 being amended provides that where a taxpayer has died and has certain amounts that are due to him, which would be included in his income if he lived throughout the year, his legal representatives may choose between several alternative methods of computing the income on these amounts that are due.

As the law reads at present, the election between these alternatives has to be made very quickly. The proposal here is to extend the time allowed to his legal representatives to make the choice.

It is also provided that, having made the choice, the legal representative can revoke that choice within the same length of time.

Senator McCUTCHEON: His legal representative made what appeared to be the best choice immediately, and during the year he can revert?

The CHAIRMAN: He gets a chance for a second thought.

Senator McCUTCHEON: A sober second thought.

The CHAIRMAN: Sober or otherwise.

Section 6, page 10. It was section 7. This is what I call the N.R.O. section.

Mr. IRWIN: Yes, sir. This section has two amendments to the N.R.O. section. The first one is intended to block a loophole which is now used to pay dividends to a non-resident free of the non-resident withholding tax. The second amendment is intended to prevent the misuse of the N.R.O. section—

The CHAIRMAN: Now, Mr. Irwin—

Senator McCUTCHEON: I knew the chairman would object to that word.

The CHAIRMAN: Mr. Irwin, let us not get into semantics. I do not know how it can be a misuse so far, because it is spelled out specifically in the statute. It distinguishes between businesses in which you engage without limitation and businesses in which there is a limitation on income. This is an item on dealing and trading in securities as a non-qualified undertaking.

Mr. IRWIN: I beg your pardon. This amendment is to change the requirements which a company must meet if it is to qualify as an N.R.O. company.

The CHAIRMAN: That is right. I approve of that statement. Are there any other questions on this? It is carried.

Section 7, you will find at the top of page 11. There is a very simple change here.

Senator McCUTCHEON: Very simple, but I wonder if Mr. Irwin can tell us what the effect on the treasury is going to be.

The CHAIRMAN: In relation to section 7?

Senator McCUTCHEON: That is right.

Mr. IRWIN: I do not think I can make a very good estimate, Mr. Chairman. As the committee will realize, this amendment will permit some companies to qualify for the three-year tax exemption in designated areas that might not otherwise be able to do so.

Senator McCUTCHEON: Up to a few months ago the Minister of Industry had issued only three certificates. Can you tell us what companies are on the verge of becoming eligible for certificates, and for whose benefit this section was brought in?

Mr. IRWIN: I do not have the information as to companies to whom certificates have been issued, nor about certificates pending; and I am not sure that the Minister of Industry would release this information. I do not know about that, but I do not have it.

Senator McCUTCHEON: Could we have the Minister of Industry, Mr. Chairman?

The CHAIRMAN: I beg your pardon?

Senator McCUTCHEON: Could we have the Minister of Industry, if we send out another messenger?

The CHAIRMAN: Of course we are entitled to call any person whom we think is necessary.

Senator McCUTCHEON: I did not expect Mr. Irwin to be able to give me an estimate of the loss or revenue, or to be able to tell me for whose benefit this section was being passed. It is obviously being passed for somebody's benefit, for the benefit of one or more person.

The CHAIRMAN: Conceivably, to a person who has not too suspicious a mind, it might be for the benefit of the public.

Senator McCUTCHEON: No, I would not go that far, Mr. Chairman.

The CHAIRMAN: I did not expect you would. It is still an interpretation.

Senator McCUTCHEON: Then I should like to make the request, Mr. Chairman, that the Minister of Industry be asked to appear.

Mr. IRWIN: Perhaps I could add a word of explanation, Mr. Chairman?

The CHAIRMAN: Go ahead.

Mr. IRWIN: As the law now reads, a company must come into commercial production by April 1, 1967. I think it was represented to the Government that this might force some companies to compete very vigorously for scarce skilled labour and scarce materials in order to meet this deadline to come into production. The Government believed that this intense competition for scarce materials and manpower, under present conditions, would not be to the benefit of the economy.

Therefore, it proposed that this deadline be extended one year, under the circumstances that are spelled out in the amendment, thus giving the companies that might be put in a difficult position because of events beyond their control to have a little longer in which to complete the project.

The CHAIRMAN: Are there any other questions?

Senator THORVALDSON: All of this, of course, refers to businesses in the designated area?

Mr. IRWIN: This applies only in a designated area.

Senator LANG: Is there a shortage of manpower in designated areas?

Mr. IRWIN: It often happens that in order to complete a project in a designated area you have to go elsewhere to get the manpower to construct the project.

The CHAIRMAN: And to get the materials also.

Senator McCUTCHEON: I hold to the thesis which I have held constantly, that building these plants in designated areas does not solve the problem of unemployment in the designated area.

The CHAIRMAN: It does not to the full extent of construction but it is hoped that the operation will.

Senator PEARSON: You have referred a number of times to manpower shortage. Are you doing anything to get extra manpower in?

Senator BAIRD: Bring in some Scotsmen.

Senator PEARSON: It does seem to me to be quite a problem that you cannot go ahead with construction because you are short of manpower.

The CHAIRMAN: I do not know whether Mr. Irwin would want to talk on that. Have you any comment?

Mr. IRWIN: I do not think it would be appropriate.

Senator McCUTCHEON: I am not even going to ask to have Mr. Marchand appear before the committee.

The CHAIRMAN: I think that is a wise decision.

Section 8, page 11. This is the section that deals with sylvite deposits. There is a mine which will get the benefit of a tax holiday.

Section 9, page 12.

Mr. IRWIN: This amendment will reduce or change the formula now found in the act for taxing the benefit an employee receives under a stock option plan. The change will make the formula less generous, or to put it the other way, it will result in a higher tax being imposed on benefits employees receive under these plans.

Senator McCUTCHEON: Will Mr. Irwin tell us what the benefit to the treasury is estimated to be?

Mr. IRWIN: We have no estimate. We do not have records of the tax we collected under the present taxing formula, and of course we don't know how many stock option benefits will be received in the future to be taxed under the new formula.

Senator McCUTCHEON: Now, Mr. Chairman, Mr. Irwin gives rather an illuminating explanation as to the representations made to government in respect of the reason for including in the bill the renumbered clause 7. Would he tell us what representations were made to government that inspired them to include the renumbered clause 9?

Mr. IRWIN: Mr. Chairman, I don't recall that any representations were made to the Government to change this. I believe the Government in examining this formula came to the conclusion that it was much too generous in the tax it imposed upon this method of remunerating employees.

Senator McCUTCHEON: You have no record as to how much tax has been collected under that portion of section 85A relating to stock options?

Mr. IRWIN: To my knowledge we have not such a record.

Senator McCUTCHEON: The computer has fallen down. Carried, Mr. Chairman, on the understanding that if the minister appears I want to revert to this.

Senator LEONARD: As the law now stands, as explained by the chairman last evening, this benefit was taxed as if it were a dividend from a company, is that correct—a 20 per cent allowance?

The CHAIRMAN: No, it was a combination of two things: one was by striking an average rate of tax but relating—

Senator LEONARD: That is as to the rate.

The CHAIRMAN: Yes, and then you were entitled to deduct 20 per cent from that. If you came up with 25 per cent, your effective rate was 20 per cent.

Senator LEONARD: The 20 per cent was as against the rate itself. Was there any reason for applying this 20 per cent as it has been done in the past? Where did it come from?

Mr. IRWIN: This was placed in the law in 1953, I believe. I have searched the written record of that time and I don't think any detailed explanation was given as to why 20 per cent was chosen in this formula, although the Minister of Finance at the time did mention that this was the rate applied at that time to small corporations. He didn't however, give a full explanation why 20 per cent was chosen instead of 15 per cent or 25 per cent. I believe it was an arbitrary figure chosen to reduce the tax on this kind of benefit.

Senator McCUTCHEON: It was a reasonably generous imposition of the only instance of capital gains tax we had.

The CHAIRMAN: In 1953 they looked at revenues and found they were well heeled.

Senator McCUTCHEON: We had a very wise and generous Minister of Finance at that time.

Senator ISNOR: That is one of the clauses about which I was not too clear in my own mind. I am speaking as to employees' benefits derived from purchase of shares in a company at a reduced price, that price being applied in a province where the public utility have power to set a price on a stock. If a stock is worth \$18, employees might be allowed to purchase at \$13.50 or \$15. How do you apply the taxing provisions?

The CHAIRMAN: You take the benefit.

Mr. IRWIN: Perhaps I should first point out in attempting to answer this question that there is still a deduction of \$200 from the tax so computed.

Senator McCUTCHEON: That is 10 times more than \$20 in the previous section.

Mr. IRWIN: This has the effect that the formula is not changed unless the benefit exceeds \$1,000 in a year. I would think the kind of plan you are referring to, Senator, is an employee stock purchase plan, and it is my understanding that the large majority of employees under a stock purchase plan do not receive benefits in any one year in excess of \$1,000. But to go back to your question, the benefit that is taxable—and this part of the act is not being changed—is the difference between what the employee pays the company for its shares and the market value of those shares at the time the stock is purchased.

Senator ISNOR: The next point arising out of your answer is how do you arrive at the amount to assess or charge up to that employee when this covers a three-year period? They are generally given a certain period of time. If a purchase is fairly large, and I know some well over \$1,000, running over a period of three years, how do you divide that up in the income tax assessment?

Mr. IRWIN: You mean they pay for the purchase of the stock by a deduction out of each pay over a three-year period?

Senator ISNOR: Yes.

Mr. IRWIN: There would be a total amount paid for the stock that could be ascertained. The question would be, of course, on what date does the employee acquire the stock. I think the relevant point is when does the employee acquire the stock, and at that time a comparison must be made between the amount he has paid for this stock and the market value of the stock. The date on which the employee acquires the stock will depend upon the agreement. He may acquire the stock and be given time to pay for it, or he may not acquire title to the stock until he has paid the full purchase price. I think this would depend upon the agreement.

Senator ISNOR: The latter is normally the course followed. They are given three years to pay.

The CHAIRMAN: That is the course followed, and that is when the value is determined.

Senator ISNOR: That is what I wanted Mr. Irwin to put on the record.

Mr. IRWIN: When the employee acquires title to the stock.

Senator THORVALDSON: We have been talking about market value of the shares. What is the method adopted by the department in coming to a conclusion as to the value when stocks are not listed on an exchange, and there is no market value as such? What is the method adopted then, or is there a method?

The CHAIRMAN: I can tell you there is a method.

Mr. IRWIN: I cannot answer this in detail because it is done by the Department of National Revenue. My colleague Mr. Pook says it is difficult to describe this in detail. Obviously there must be a determination of the value of the stock for which there is no listed market value, and it is a complicated affair, I understand, having regard to the value of the assets of the company and so on.

Senator McCUTCHEON: It is the department's intelligent guess on the high side as against the taxpayer's intelligent guess on the low side.

The CHAIRMAN: Then there is a compromise at times.

Senator McCUTCHEON: That is right.

The CHAIRMAN: Section 10 on page 12.

Senator McCUTCHEON: Carried.

The CHAIRMAN: This has to do with extending the age limit for members of the Tax Appeal Board. This is section 11 and the new Part IID—the 5 per cent refundable which carries you over to page 19. Are there any questions you want to ask in relation to this particular section?

Senator McCUTCHEON: Not unless the minister comes.

The CHAIRMAN: Carried?

Hon. SENATORS: Carried.

Senator LEONARD: Might we again have the amount involved which the 5 per cent will produce?

The CHAIRMAN: Are you able to give us some estimate of that, Mr. Irwin?

Mr. IRWIN: I believe in his budget speech the minister estimated this might produce \$1/4 billion over the 18 months.

Senator THORVALDSON: I take it that any company with an income of less than \$30,000 is not affected?

Senator McCUTCHEON: No, which has a cash flow.

Senator THORVALDSON: Companies having a cash flow of less than \$30,000 are not affected by this bill.

Senator McCUTCHEON: The cash base is the term they use.

Mr. IRWIN: Such a company might have to make a return to establish it had no tax to pay.

The CHAIRMAN: Section 12 on page 19. These are your Government bonds, etcetera, and no withholding tax. Are there any questions on that section?

Senator McCUTCHEON: Carried.

The CHAIRMAN: Section 13, on page 20. What have you to say about that, Mr. Irwin?

Mr. IRWIN: This is a relieving amendment, Mr. Chairman. It deals with companies called foreign business corporations.

The CHAIRMAN: And they are a diminishing breed, are they not?

Mr. IRWIN: Yes, they are. A company may not now qualify as a foreign business corporation, but there is a number of companies which have this status. Such a company is resident in Canada but carries on all its business outside Canada. The general law is that Canada receives 15 per cent withholding tax when such a company pays a dividend to a non-resident. However, the law has an exception which says that when such a company pays a dividend to a resident of a country from which it derives 90 per cent of its income, that dividend shall be exempt if the company received its income from the operation of public utilities in the country in which the recipient of the dividend resides.

The amendment merely adds to this exception the case where the foreign business corporation derives 90 per cent of its income from mining, transporting and processing ore in the country in which the recipient of the dividend is a resident.

Senator McCUTCHEON: What company or companies are affected by this?

The CHAIRMAN: There are very few.

Senator McCUTCHEON: I am sure there are, but could we have them?

Mr. IRWIN: I do not think I would be in a position to name the companies that might be affected by this. I do not see company returns, and I do not think National Revenue is free to discuss them.

The CHAIRMAN: Brazilian Traction might be one of them.

Senator McCUTCHEON: It is. That is already covered. I am not objecting to the section, but I would like this information.

The CHAIRMAN: It has to be a company that had this status about four or five years ago when the law was changed, and you could have no more such companies.

Senator McCUTCHEON: That is right.

The CHAIRMAN: This is the old 4-k Company and goes way back to the thirties.

Senator McCUTCHEON: I recognize the kind of company it is, but I want to know the particular company or companies that inspired this amendment so we could judge what the circumstances are. This is a relieving amendment for foreign shareholders, and I am just curious—I am more than curious, I would like to know.

Mr. IRWIN: I do not know all the companies that might be foreign business corporations carrying on a mining business in foreign countries.

Senator McCUTCHEON: I make my normal reservations. Carried.

The CHAIRMAN: Carried.

Section 14, at the top of page 21.

Mr. IRWIN: This is consequential upon the exemption from non-resident withholding tax for interest on bonds issued by governments. The amendment provides that the rules concerning the taxation of non-residents on interest on treasury bills shall apply only with respect to bills issued before April 16, 1966.

The CHAIRMAN: Before?

Mr. IRWIN: This particular amendment applies only to interest on Treasury bills issued before April 16, 1966, because after that date the interest will be exempt when paid to non-residents.

The CHAIRMAN: Carried.

Section 15, on page 21. This is related to registered charitable organizations, and simply requires the maintenance of records.

Carried.

Section 16, on page 21.

Mr. IRWIN: This is consequential upon the exemption from non-resident withholding tax for interest on new issues of Government bonds.

Senator McCUTCHEON: You have to make the coupons identifiable?

Mr. IRWIN: Yes, that is right.

The CHAIRMAN: Carried.

Section 17 on page 22. This is the prohibition of communication of information. I might say this is substantially lifted out of the provisions of the Estate Tax Act?

Mr. IRWIN: Yes.

Senator McCUTCHEON: You would not want to move an amendment that this would not apply to officials appearing before the Banking and Commerce Committee of the Senate?

The CHAIRMAN: Well, do you suggest it?

Senator McCUTCHEON: I just throw it out.

The CHAIRMAN: Well, we will throw it out too. Any questions on this section?

Carried.

Then on page 23, section 18.

Senator McCUTCHEON: That is consequential. Carried.

The CHAIRMAN: Carried.

On page 24, the definition of "in Canada". Carried.

Senator HUGESSEN: May I go back to section 15 for a moment?

The CHAIRMAN: That is on page 21.

Senator HUGESSEN: Clause 3. You require every Canadian charitable organization to register with the minister?

Mr. IRWIN: Yes.

Senator McCUTCHEON: The Minister of National Revenue, I take it.

Senator HUGESSEN: Does that mean that every single church that collects money will have to register with the minister?

Mr. IRWIN: That is my understanding.

Senator HUGESSEN: Every single church and every single organization that collects money for charitable purposes will have to register with the minister?

Mr. IRWIN: Yes.

Senator McCUTCHEON: And keep records and duplicate receipts.

Senator HUGESSEN: Is that not going to make an enormous mass of material for your department?

The CHAIRMAN: Not his department, but National Revenue.

Senator McCUTCHEON: They have big computers, senator, and they can keep records of any kind.

The CHAIRMAN: Mr. Pook, have you any comment on that?

Mr. POOK: There will certainly be a large number to register. It will make a very big job in the next few months, getting them all registered for the first time.

Senator THORVALDSON: On the same point, would the department have any idea as to the number of these organizations which may have a register? I think of all the thousands of towns, villages and cities in this country, some of them having two or three churches—even small villages. I am just wondering about the mass of detail which will be required, and whether an assessment has been made by the department as to the amount of work involved in this procedure.

The CHAIRMAN: They have some idea now, because anyone who has made a donation to a church or charity and claims it, there is some checking of it.

Senator McCUTCHEON: There is also a lot of money involved.

The CHAIRMAN: Any other questions?

Senator ISNOR: Mr. Chairman, I want to ask a general question. Perhaps Mr. Irwin can throw some light on it. As a small businessman I was quite concerned about a statement made by the honourable Senator McCutcheon as it affects the small businessman. What are the changes that affect the small businessman to such an extent that he might possibly be driven out of business?

Senator McCUTCHEON: Did I go that far?

The CHAIRMAN: Yes, you did last night.

Senator IRWIN: Yes, you went so far—well, I will not say that I did not sleep because of it, but you worried me. I would like to find out what the real danger is so far as the small businessman is concerned.

Senator McCUTCHEON: It might help Mr. Irwin if I paraphrase what I said. I said I thought the refundable tax would not be effective in slowing down expansion by the companies from whom it would be largely collected, which are the large companies. I believe the minister estimated that 20 per cent of the companies in Canada would be subject to the tax. I indicated that their expansion plans were normally made well in advance, and would carry through. They are of a nature that would require them to go ahead, and the only effect of this might be to drive them into the money market because of a shortage of cash, and that would drive the small businessman out of the money market or limit his access to it.

The CHAIRMAN: Not necessarily if his credit is good.

Senator McCUTCHEON: Not necessarily, but this would tend to do that.

Senator KINLEY: Usually the small businessman has not very much money in his business. When he dies there is usually not enough money to pay the estate tax.

Senator McCUTCHEON: It serves him right.

Senator ISNOR: I am quite prepared to accept the revision of Senator McCutcheon's thinking on this.

The CHAIRMAN: It is not as terrifying as we thought it was.

Senator McCUTCHEON: I think if you read *Hansard* you will find that that is right.

Senator ISNOR: Yes, if Senator McCutcheon reads *Hansard* he will see that he did not quite put it in that way.

Senator McCUTCHEON: No, if you read *Hansard* you will see what I said.

Senator ISNOR: Is there any danger so far as the small businessman in competition between—

The CHAIRMAN: Are you referring to the area of this refundable tax?

Senator ISNOR: Yes.

Mr. IRWIN: The effect that a new tax may have is always a matter of opinion and estimation. The refundable tax by its provisions will not affect directly many small businesses because they have the \$30,000 deduction from their tax base. It is quite true that the effect of the 5 per cent refundable tax is meant to tighten up the supply of money. I think the Minister of Finance made this quite clear. It takes some money out of the corporations' treasuries, and if they do have to borrow then it reduces the amount of money that is available. But, where the impact of this will fall, whether it will have a greater effect on small businesses or on large businesses, I am not able to say.

The CHAIRMAN: Are there any other questions?

Senator THORVALDSON: Yes, Mr. Chairman. I do not think it is fair to ask this question of Mr. Irwin. I would have liked to ask it of the minister. I would like to know what is the full and complete reason for this particular legislation or regard to the 5 per cent refundable tax. Is the whole purpose that of slowing down the economy, or is the purpose that of acquiring more money for the Government on a loan basis? I will admit that it is not Mr. Irwin's position to answer such a question.

Senator BAIRD: That is a question of policy.

Senator THORVALDSON: I will not pursue it.

The CHAIRMAN: Mr. Irwin gave an explanation in the beginning as to the purpose of this tax as stated by the minister. Is there some additional statement that you want?

Senator THORVALDSON: May I ask the question of Mr. Irwin?

The CHAIRMAN: Yes.

Senator THORVALDSON: Is the whole purpose of this section to slow down the economy?

Mr. IRWIN: I do not think I should attempt to add to what the minister said in his budget speech, and in subsequent public statements.

The CHAIRMAN: Are there any other questions? The minister is not available. There is a Cabinet meeting this morning, and there are matters he has to deal with that compel him to remain. The message I have received is that he is not available.

Senator LEONARD: Will he be available at 11.30?

Senator McCUTCHEON: Or at 2 o'clock?

The CHAIRMAN: He will not be available this morning.

Senator McCUTCHEON: I move that the committee rises now to resume at 2 o'clock.

The CHAIRMAN: I am in the hands of the committee. Is the committee ready to report the bill?

Senator LEONARD: I must admit that I would like to hear the minister. He might be available at some other time than 2 o'clock. That is the only thing in my mind so far as Senator McCutcheon's motion is concerned. I wonder if we can resolve the matter—

The CHAIRMAN: If you feel that way I would suggest that we rise until 12 o'clock. I will investigate again the possibility of the minister's being available at that time.

Senator BAIRD: I move that we report the bill. The minister will not add anything.

Senator McCUTCHEON: I move that we adjourn until 12 o'clock.

Hon. SENATORS: Agreed.

The committee adjourned until 12 noon.

Upon resuming at 12 noon.

The CHAIRMAN: We now have the minister with us. Senators indicated that they wished to ask a few questions. I understand you are among them, Senator Leonard?

Senator LEONARD: There are two points on which I would be glad if the minister would perhaps give a little further explanation. Earlier this morning we had officials from the Department of National Revenue on questions of policy. I think we should have a statement on the stock options plan and the five per cent refundable tax. The latter is more important, and perhaps the minister would like to deal with that, particularly from the standpoint of the tax as an anti-inflationary measure.

Honourable Mitchell Sharp, Minister of Finance: Thank you, Mr. Chairman. I regret that my duties elsewhere prevented me from appearing earlier before the committee, but I managed to get away from the Cabinet after I had seen that the interests of the Treasury were properly safeguarded.

Senator McCUTCHEON: Are you sure you shouldn't go back?

Hon. Mr. SHARP: Well, the real problems arise not in pressure from the Government, but in pressure from the Opposition to spend money, which is my greatest burden.

Senator McCUTCHEON: The Opposition is not represented on the Cabinet side.

Hon. Mr. SHARP: The five per cent refundable tax on corporation cash income, to use a little shorthand, is an innovation in tax laws I think anywhere in the world. It was devised to meet the particular problem that we face in Canada at the present time and that we expect to face in the foreseeable future.

The general measures of fiscal and monetary policy that we have been following are of a general anti-inflationary character. We discovered in our analysis of inflationary pressures that the main pressure was arising in the field of investment, whether public or private, particularly centred upon construction, and this remains the problem. Indeed, I have received additional representations recently that it is in the field of construction that the principal inflationary pressures prevailed.

General monetary policy and general fiscal policies do have or can have a moderating effect upon business investment, but we felt it desirable to introduce a measure that was directed specifically at the spending of the funds accumulated by business organizations whether out of profits or depreciation reserves.

As senators probably know, most private business investment is financed out of retained earnings and depreciation reserves rather than out of borrowed moneys. The five per cent tax was directed specifically at reducing the amount of money available to corporations immediately for investment during this period of particular pressure.

We tried to devise an instrument that would not add appreciably to the cost of making the investment. That is why we decided that we would refund the tax with a moderate rate of interest rather than to impose a penalty of loss of interest on the amounts taken from the corporation by the five per cent tax.

We also came to the conclusion that we should direct this tax at the big business investors rather than at the generality of small industries. That is why we put in a deductible amount of \$30,000 which not only means that it is only the larger companies that are particularly affected, but it also reduces enormously the administrative problem of dealing with the thousands of small businesses that make relatively small investments.

Senator McCUTCHEON: What would you say—about 20 per cent of the Canadian companies?

Hon. Mr. SHARP: Yes, of that order of magnitude.

Senator LEONARD: Twenty per cent in number?

Hon. Mr. SHARP: In number, and of course a much higher proportion in terms of investment.

Senator McCUTCHEON: Mr. Chairman, my concern is as to whether what the minister is doing will be effective in achieving the objective, which objective I share and agree on with him. My suggestion to him is that this forced saving—which any company could look forward to receiving back with interest in 24 months from now or from October, or whenever it is within the foreseeable future—will not affect materially the capital spending programs of large businesses. Such programs take normally some time to develop and normally are spread over a large area. Although the minister has tried to modify that effect—by paying, as he says, a modest rate of interest, 5 per cent—the effect can only be some increase in cost, because corporate borrowings today are at a higher rate. To the extent that these large corporate borrowers come into the money market, over and above what they would otherwise have done, of course, then less creditworthy borrowers, let us say, smaller borrowers, are pushed out of that market.

I do not know whether this information is available yet or not. I do not think the mid-year D.B.S. statement on private and public investment intentions has been published yet. If it has, I have overlooked it. Could the minister tell us whether there is any substantial evidence that the large companies—the pulp and paper companies, the steel companies, the mining companies—have significantly revised their capital investment plans?

Hon. Mr. SHARP: Perhaps I should begin, Mr. Chairman, by pointing out that this 5 per cent refundable tax was only one of the measures in the budget directed to modify the investment plannings of business.

Senator McCUTCHEON: I am afraid I do not understand that. Will you give us the other?

Hon. Mr. SHARP: There are two others. One was the reduction in capital cost allowances during this period of 18 months. The other was the sales tax, which is coming off in stages. The first reduction is to take place in April of next year. The tax to be finally removed on machinery and equipment, which is one of the main ingredients of the investment holding, is to be removed entirely in the following April. The fourth element, of course, is the general monetary policy. It would be very difficult indeed to determine which of these factors had the most influence upon investment decisions.

Senator McCUTCHEON: Of course, one argues against the other. Reducing the amount of capital cost allowances means you get less refundable tax.

The CHAIRMAN: Less cash change.

Senator McCUTCHEON: Yes.

Hon. Mr. SHARP: They work against one another. I can assure senators that we have had strong representations against all of these measures from business organizations because it is interfering with their programs—which is exactly why we introduced it. If we had not had any complaints, then I would be very concerned indeed.

The second thing I would like to mention is that we were not aiming at stopping anything, we were only aiming at modifying moderately the amount of investment.

In other words, a company that has engaged upon a program that it has announced and has financed and has ready, may be induced—and we believe would be induced—not to do everything that they originally intended to do within a certain period. If in fact that is accomplished, this is important from the point of view of moderating inflationary pressures. It should be borne in mind that in my budget statement I pointed out that the extent to which we hoped to modify investment intentions was only a modest amount—my recollection is something of the order of \$300 million out of \$10 billion.

Senator CROLL: You mean the 5 per cent will be \$300 million?

Hon. Mr. SHARP: No.

Senator CROLL: Very well. Go ahead.

Hon. Mr. SHARP: Our whole purpose was only to moderate or to reduce moderately the extent of investment intentions, by all the measures that we employed.

I was quite determined in this budget that I was not going to introduce measures that would bring expansion to a halt. That was not my objective. My objective was to sustain the expansion, and the best way of sustaining the expansion was to be sure it did not get out of hand this year. The whole purpose of the budget was moderate restraint. We did not want to stop the expansion. This was the last thing we wanted to do. As honourable senators well know, there is no purpose in creating unnecessary unemployment.

The purpose is to sustain the expansion as long as possible. Therefore, our measures were directed to inducing those who were embarked upon investment plans, in change those so that they would be contained within physical possibilities. The indications that we have from preliminary information on investment intentions are that they are being affected.

To be perfectly frank, the pressures are so great that I do not think that the measures were excessive. In other words, while it is having a desirable influence on investment plans, we certainly have not overshot the mark. It may be that because of rising costs, the total amount of investment will not be greatly modified this year, from earlier indications. On the other hand, having in mind the very strong pressures that exist in the economy, I think that is quite a remarkable achievement.

Senator McCUTCHEON: You are suggesting that possibly the physical expansion may be down—

Hon. Mr. SHARP: Exactly.

Senator McCUTCHEON: —although the dollar expansion might even be up?

Hon. Mr. SHARP: It could be. We are not at all clear about this, and we have still six months to go.

Senator McCUTCHEON: I have opened some tenders recently and I am very sympathetic.

Senator KINLEY: It appears to me that this temporary compulsory tax is closely associated with depreciation. For instance, if you put figures in for depreciation, you might have something more concrete than money which is held in reserve so that they can use it after this period. Therefore, this allowance is closely associated with depreciation.

Hon. Mr. SHARP: Of course the 5 per cent tax applied to the income derived from depreciation allowances, because most investment in this country is financed out of depreciation allowances.

Senator CROLL: Did I understand you to say that the stringencies seemed to represent about \$300 million against \$10 billion?

Hon. Mr. SHARP: We felt if we were able in this calendar year to effect one-third of a billion dollars of the intended increase in business and investment expenditure, that that would be a highly desirable thing to do, and would result in a smaller increase in prices and greater benefit in terms of physical employment. The problem we are facing at the present time is that too much is being attempted. This is particularly evident in construction where to a very considerable extent builders are taking labour away from one another. The result is that there is no more labour available. It is highly desirable, if you can, to remove that excess from the program so that there is no undue pressure upon resources, and that more can be accomplished. This is one of the paradoxes of an inflationary situation: you get to a point where further pressure reduces productivity and physical output. Therefore it is highly desirable from the point of view of the economy as a whole to moderate the pressures and to achieve more in physical terms. That was the objective of the budget. In all these situations, of course, one cannot be sure of the effect. We live in a free enterprise economy. The Government cannot tax everybody on so many dollars, and we have to use these indirect measures of fiscal and monetary restraints.

Senator McCUTCHEON: Mr. Chairman, would the minister deal with Senator Leonard's second question?

Senator LEONARD: Perhaps I could re-state it. In connection with stock options, it is clear that so far as stock option agreements are concerned those that existed before March 29, 1966, are in effect as long as the option is exercised by January 1, 1968. So that it really affects new stock option

agreements. The question with which we are concerned in my view is the effect on industry in its desire to acquire senior or potential senior executives particularly in competition with the United States where, as I understand it, the tax on a benefit derived from a stock option agreement is of the order of 25 per cent tax on the benefit, which on the whole would be less than the tax in Canada under a similar agreement.

Senator McCUTCHEON: The proposed tax.

Senator LEONARD: The proposed tax—whereas in the past the balance has been the other way.

Hon. Mr. SHARP: The reason we changed the rules applying to taxation of stock options was we considered they were now too generous. There were also some abuses, but I won't give that as the main reason for the change. The reason we proposed these changes is that we consider that tax options are not being taxed at an appropriate rate. I am sure most senators are familiar with how stock options work, but let me give an illustration. Take the example of an executive with a salary of \$30,000 a year whose marginal rate of tax is 50 per cent. If he received the benefit of \$10,000, as well as his salary in some other form, that would also come within the 50 per cent. However, if this employee received \$10,000 worth of stock options in addition to his salary for the past three years, this would amount to \$30,000 on which he would have been taxed at 13 per cent. This is because the average rate would be 33 per cent and under the present formula that would be reduced by 20 per cent to leave 13 per cent. We looked at that and came to the conclusion that it was an undue encouragement to stock option plans. Moreover it presented an inequity in relation to employees whose companies do not have stock option plans.

I know in my own constituency that after the Budget was presented I happened to be at a social gathering attended by some of my constituents who had stock option plans and a number who did not enjoy such plans. There, all at once, I was confronted with the inequity to those who did not have such plans. They asked why should their salaries and remuneration be taxed at marginal rates while those who had stock option plans received very generous treatment. It was brought home to me in a direct way at that time.

Senator McCUTCHEON: This was a social gathering.

Hon. Mr. SHARP: It was a social gathering; I did not know the political persuasion of those present.

Senator McCUTCHEON: Mr. Chairman, surely the minister is not justifying this on the basis of inequity as between employees in various types of companies.

The CHAIRMAN: I think he urged it on the basis that it was being too generous.

Senator McCUTCHEON: Mr. Minister, did you receive any representations on this matter?

Hon. Mr. SHARP: Yes.

Senator McCUTCHEON: I mean from outside your department.

Hon. Mr. SHARP: You mean did I receive representations before or after?

Senator McCUTCHEON: Before.

Hon. Mr. SHARP: Not from anyone who wanted to pay more tax. There had been some representations from taxpayers who felt that this was an inequity. They wanted to know why the remuneration they received was subject to full rates of tax while some persons were receiving the benefits of stock option plans. In fact one representation was not made to me directly, but was made to the Porter Commission by the Chartered Accountants Association of Canada which recommended almost exactly what we have incorporated into this law.

Senator McCUTCHEON: Mr. Irwin could not give us this this morning, but perhaps the minister or the deputy minister could give us an indication of the amount of tax collected on benefits received from stock options in a typical recent year.

Hon. Mr. SHARP: I am sorry I do not have that information. The Department of National Revenue does not break down its receipts in that fashion. In any event we would only know how much we collected; we would not know how much we could have collected.

Senator McCUTCHEON: Does the minister agree with Senator Leonard's suggestion with regard to the brain drain and to the fact that it is the major companies who grant these options who will be placed at a further disadvantage vis-à-vis their American competitors?

Senator LEONARD: It was a question on my part and not exactly a suggestion.

Hon. Mr. SHARP: As to the general question about the desirability of stopping the brain drain, I would agree entirely, and therefore I think this should be made the subject of general measures of Government policy. I don't think I could defend this kind of measure which places the responsibility upon those particular companies that happen to have stock option plans. If we are going to deal with this problem we ought to deal generally and not selectively in a way that it applies only to a stock option taxation benefit that is only available to particular companies for various reasons.

Senator McCUTCHEON: That is ideal in theory, but I think it would be a little more difficult to put into practice. I may have misread the minister's Budget statement, and I may have misread his press release, but I had the opportunity to go over both of them during our adjournment, and I was curious, if my reading is correct, that the minister at no place in his speech other than when tabling the resolution referred to this.

Hon. Mr. SHARP: The reason was I didn't really think this was a matter of great general importance.

Senator McCUTCHEON: Has the minister revised his view since he tabled the resolution?

Hon. Mr. SHARP: I have discovered the extent of stock option plans is greater than I anticipated, and if I had known I would certainly have been justified in putting in the measures I now propose, and I might have mentioned this in my speech. But this has not changed my view. Indeed, the rapid expansion of stock option plans is a very good reason for taking action.

Senator McCUTCHEON: What is the minister's objection to this? Where does the country suffer by reason of this? If it is a simple matter that the minister needs more revenue, if he expected to get substantially more revenue, he would have mentioned it in his Budget speech.

Hon. Mr. SHARP: This is not a revenue measure, but one of equity in taxation. The present provisions in relation to stock option plans are in the opinion of myself and the Government experts, generous.

Senator McCUTCHEON: I should have taken a few days off to cite all the inequities in taxation to the minister.

The CHAIRMAN: We cannot deal with them all at once.

Senator LEONARD: I suggest, Mr. Minister, that any matter of relative rates of taxation as between the United States and Canada can be met in future stock option agreements by the adjustment of the price at which the stock can be acquired. That is to say, a Canadian employer may, in view of the taxation, adjust the price of the stock option.

Hon. Mr. SHARP: That is right.

Senator McCUTCHEON: I suggest to the senator that with the new securities legislation coming in, that large companies whose shares are recognized on the large stock exchanges will not be allowed to issue stock options at any price substantially below the market.

Hon. Mr. SHARP: My general study of the taxation of stock options in the United States and Canada does not lead me to the view that our proposed legislation is very much less generous than the United States. Indeed, the benefits in the United States are taxed at 25 per cent, and under the proposal that I have in this law quite a number of these stock option plans will be taxed at less than 25 per cent to the recipient, depending on the amount. The larger recipients, and those who presumably are most concerned about this, may pay more than in the United States—this depends; but there is not that disparity of treatment, that is sometimes referred to between the two countries in this proposed legislation and that in the United States.

Senator McCUTCHEON: For the "middle executive," to use that term, earning possibly up to \$30,000, there would be reasonable equity. He will pay a little more in Canada than he would in the United States. But for the kind of executives you go to look for in the United States, they start out by saying, "We are going to pay more income tax if we come to Canada, and we are going to be subject to this and that." You then say, "Of course, we have a stock option plan, and you will have the advantages of it." I know of many cases where that had to be done to bring the people into Canada we badly needed. Then they look at the taxation and say, "Oh my God, this is not a very satisfactory situation." I just do not understand, Mr. Chairman—and the minister knows I am saying this sincerely—why the applecart needed to be upset.

The CHAIRMAN: The minister has given a reason.

Senator McCUTCHEON: Yes, the minister has given a reason, so I guess we differ.

Senator CROLL: Senator McCutcheon started out by talking about the brain drain from Canada and wound up talking about the brain drain from the United States.

Senator McCUTCHEON: Well, it works both ways. We want to stop people going to the United States, and want to bring good people into Canada, do we not?

Senator CROLL: Yes, to some extent.

Hon. Mr. SHARP: Let me say to the senator—and I know he is very interested in universities, particularly in the University of Toronto—that universities are not in a position to offer stock option plans. Therefore, they have to offer salaries competitive with the United States, and I think it is not unfair, really, to expect this should be the general rule. I do not believe that we should but particular companies in a special position to get and keep those people, in relation to the taxpayers generally, many of whom cannot have stock option plans, and in relation to other institutions where the brain drain is just as serious as it is in business.

Senator McCUTCHEON: I appreciate the position of the universities very fully, but I think the competition is between American university salaries—and I know none of them that is a profit-making institution that offers stock options—and our own salary levels. Unfortunately, there is a world-wide shortage of university teachers, and we are in competition with the English and American universities and universities in other parts of the world. Would you think, really, we suffer in the universities because the "XYZ" company gives its senior executives stock options? I am sure the minister is not advancing that as a serious argument for what he is doing.

Hon. Mr. SHARP: I am advancing the argument of equity quite seriously. Great institutions like our chartered banks do not offer stock options to their employees, but they have to compete with banks in the United States too in order to maintain the quality of their organization. I do not think it should be urged that the banks should be given the right to issue stock option plans in order to enable them to maintain the calibre of their employees.

Senator McCUTCHEON: It would make them more competitive.

Hon. Mr. SHARP: I agree.

The CHAIRMAN: That bill is not before us.

Senator McCUTCHEON: No, not yet.

The CHAIRMAN: Are there any other questions on these two items? There was one other item, Mr. Minister—

Senator BURCHILL: Mr. Chairman, before we go on to another item, and if we have finished with this one, might we revert to the first item we discussed, in connection with the moderate expansion of industry?

Mr. Sharp is aware of the fact that in the section of the economy that I come from, which is the Atlantic provinces, you expressed the view you did not want the checking of moderate expansion. Down in our territory, where the bulk of our industries are small, moderate expansion has been checked, not by your Budget, sir, but by the difficulty in getting financial assistance from our banks. Expansion has been arranged in the last year and all the plans put forward, but the money just was not available this year, so the expansion did not occur. You are aware of that, of course.

Hon. Mr. SHARP: May I make one comment on this, Mr. Chairman? It is impossible to have anything except a national monetary policy. We have a national monetary unit, and we must have a national monetary policy. We could not have a differing monetary policy in one part of the country from another. On the other hand, there is nothing that would be more harmful to the development of areas like the Atlantic provinces than inflationary conditions existing across this country. I could not think of anything that would do greater harm to the development of the Atlantic provinces than inflation throughout Canada as a whole. The interest of the Atlantic provinces in restraining inflationary pressures must be even greater than it is in Ontario.

Senator ISNOR: Would you repeat that?

Hon. Mr. SHARP: I say that the interest of the Atlantic provinces in restraining inflationary tendencies in Canada must be even greater than it is in the Province of Ontario.

Senator KINLEY: I think they are going to get industrial indigestion before they are through.

Senator McCUTCHEON: May I make one statement? I have never been the fortunate recipient of the benefit of a stock option.

Senator WALKER: I move that we report the bill.

The CHAIRMAN: There was a question this morning as to the foreign business corporations that are in existence who are engaged in mining, transporting and the processing of ore.

Hon. Mr. SHARP: I understand that the committee, Mr. Chairman, wanted to know the reason why this particular extension was made. I am reluctant to reveal the names of taxpayers—

Senator McCUTCHEON: These are foreign taxpayers.

Hon. Mr. SHARP: Yes, even the names of foreign taxpayers. But, I can tell the committee that one of the main representations we received, and one on which we acted, came from the National Planning Agency of the Republic of

Liberia, which requested us to look at the position of companies in that country that were doing business in Canada.

Senator McCUTCHEON: I think that that is a sufficient answer, Mr. Minister.

The CHAIRMAN: I have a motion to report the bill without amendment. Is it carried?

Hon. SENATORS: Agreed.

Senator McCUTCHEON: On division, Mr. Chairman.

The CHAIRMAN: Yes, of course I should have said that.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 27

Complete Proceedings on the Bill S-45,

intituled: "An Act respecting the Boundary between the Provinces of Manitoba and Saskatchewan"

Complete Proceedings on the Bill S-46,

intituled: "An Act respecting the Boundary between the Province of Saskatchewan and the Northwest Territories"

Complete Proceedings on the Bill S-47,

intituled: "An Act respecting the Boundary between the Province of Manitoba and the Northwest Territories"

Complete Proceedings on the Bill S-48,

intituled: "An Act to amend the Canada Lands Surveys Act"

WEDNESDAY, AUGUST 31st, 1966

WITNESSES:

Department of Northern Affairs and National Resources: E. A. Côté, Deputy Minister; Department of Mines and Technical Surveys: R. Thistlethwaite, Surveyor General; Department of Justice: J. W. Ryan, Legislation Section.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i>
Cook	Leonard	<i>Shelburne</i>)
Croll	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Davis	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	McCutcheon	Vien
Farris	McDonald	Walker
Fergusson	McKeen	White
Flynn	McLean	Willis—(50)

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDERS OF REFERENCE

Extracts from the Minutes of the Proceedings of the Senate, Tuesday, August 30th, 1966:

"Pursuant to the Order of the Day, the Honourable Senator McDonald moved, seconded by the Honourable Senator MacKenzie, that the Bill S-45, intituled: "An Act respecting the Boundary between the Provinces of Manitoba and Saskatchewan", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator MacKenzie, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

Pursuant to the Order of the Day, the Honourable Senator McDonald moved, seconded by the Honourable Senator MacKenzie, that the Bill S-46, intituled: "An Act respecting the Boundary between the Province of Saskatchewan and the Northwest Territories", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator MacKenzie, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

Pursuant to the Order of the Day, the Honourable Senator McDonald moved, seconded by the Honourable Senator MacKenzie, that the Bill S-47, intituled: "An Act respecting the Boundary between the Province of Manitoba and the Northwest Territories", be read the second time.

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator MacKenzie, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.

Pursuant to the Order of the Day, the Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Hayden, that the Bill S-48, intitled: "An Act to amend the Canada Lands Surveys Act", be read the second time.

After debate and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Hayden, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, August 31st, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Croll, Fergusson, Flynn, Gélinas, Gershaw, Gouin, Haig, Irvine, Isnor, Kinley, Lang, Macdonald (*Brantford*), McDonald, Molson, Pouliot, Roebuck, Smith (*Queens-Shelburne*), Walker and Willis. (21).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel and R. J. Batt, Assistant Law Clerk, Parliamentary Counsel and Chief, Senate Committees Branch.

On Motion of the Honourable Senator Molson it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bills S-45, S-46, S-47 and S-48.

Bills S-45, S-46 and S-47 intituled respectively, "An Act respecting the Boundary between the Provinces of Manitoba and Saskatchewan", "An Act respecting the Boundary between the Province of Saskatchewan and the Northwest Territories", and "An Act respecting the Boundary between the Province of Manitoba and the Northwest Territories" were read and considered.

The following witnesses were heard:

DEPARTMENT OF NORTHERN AFFAIRS AND NATIONAL RESOURCES:

E. A. Côté, Deputy Minister.

DEPARTMENT OF MINES AND TECHNICAL SURVEYS:

R. Thistlethwaite, Surveyor General.

On Motion of the Honourable Senator Flynn it was Resolved to report the said Bills without amendment.

At 10.00 a.m. the Committee proceeded to the next order of business.

Bill S-48, "An Act to amend the Canada Lands Surveys Act", was read and considered.

The following witnesses were heard:

DEPARTMENT OF MINES AND TECHNICAL SURVEYS:

R. Thistlethwaite, Surveyor General.

DEPARTMENT OF JUSTICE:

J. W. Ryan, Legislation Section.

At 10.20 a.m. the Committee adjourned consideration of the said Bill until 2.15 p.m. this day in Room 267-S.

At 2.15 p.m. the Committee resumed.

Present: The Honourable Senators Hayden (*Chairman*), Croll, Dessureault, Fergusson, Gouin, Hugessen, Kinley, Macdonald (*Brantford*), McDonald, Molson, Pouliot and Rattenbury. (12)

STANDING COMMITTEE

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel and R. J. Butt, Assistant Law Clerk, Parliamentary Counsel and Chief, Senate Committees Branch.

On Motion of the Honourable Senator Croll it was Resolved to report the said Bill without amendment.

At 2.45 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, August 31st, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-45, intituled: "An Act respecting the Boundary between the Provinces of Manitoba and Saskatchewan", has in obedience to the order of reference of August 30th, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

REPORT OF THE COMMITTEE

WEDNESDAY, August 31st, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-46, intituled: "An Act respecting the Boundary between the Province of Saskatchewan and the Northwest Territories", has in obedience to the order of reference of August 30th, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

REPORT OF THE COMMITTEE

WEDNESDAY, August 31st, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-47, intituled: "An Act respecting the Boundary between the Province of Manitoba and the Northwest Territories", has in obedience to the order of reference of August 30th, 1966, examined the said bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

REPORT OF THE COMMITTEE

WEDNESDAY, August 31st, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-48, intituled: "An Act to amend the Canada Lands Surveys Act", has in obedience to the order of reference of August 30th, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE EVIDENCE

OTTAWA, WEDNESDAY, August 31st, 1966

The Standing Committee on Banking and Commerce, to which was referred Bill S-45, an act respecting the Boundary between the Provinces of Manitoba and Saskatchewan, Bill S-46, an act respecting the Boundary between the Province of Saskatchewan and the Northwest Territories, Bill S-47, an act respecting the Boundary between the Province of Manitoba and the Northwest Territories, and Bill S-48, an act to amend the Canada Lands Surveys Act, met this day at 9.30 a.m. to give consideration to the bills.

Senator **SALTER A. HAYDEN** in the Chair.

The **CHAIRMAN**: I call the meeting to order. We have four bills this morning and they all originate in the Senate. Our usual practice in these circumstances have been to have a verbatim report. May I have the necessary resolution?

The Committee agreed that a verbatim report be made of the committee's proceedings on the said bills.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the said bills.

The **CHAIRMAN**: Honourable senators, the first three bills, Bills S-45, S-46 and S-47, deal with the location or the charting of the boundaries on the ground in relation to certain provinces. The nature of the evidence to be submitted will be the same in each case. I suggest that when we are taking evidence we hear the evidence in its application to the three bills and do not draw any fine line; and that when we come to reporting them we have a separate report in respect of each bill. Is that satisfactory?

Hon. **SENATORS**: Agreed.

The **CHAIRMAN**: We have here this morning Mr. E. A. Côté, Deputy Minister, Department of Northern Affairs and National Resources; Mr. B. G. Sivertz, Commissioner, Northwest Territories; and Mr. R. Thistlethwaite, Surveyor General, Department of Mines and Technical Surveys. Also, in case any constitutional question might arise, we have Mr. J. W. Ryan, Legislation Section, Department of Justice. I think that yesterday afternoon we finally resolved the constitutional question, but in case it might raise its head again, Mr. Ryan is here.

Honourable senators, some question may develop on the last bill before us, Bill S-48.

Now, Mr. Côté, you are in a position where, I take it, these bills, as a matter of administration, come under your jurisdiction as deputy minister?

Mr. E. A. Côté, Deputy Minister, Department of Northern Affairs and National Resources: Mr. Chairman, the actual question of demarcating of boundary lines is a matter for the Department of Mines and Technical Surveys.

However, I must say to the committee that in 1955 my predecessor suggested to the Deputy Minister of Mines and Surveys that it seemed to him that the time was ripe to demarcate, to delineate on the ground, the boundaries between Saskatchewan and Manitoba on the one hand, and the Northwest Territories on the other hand.

As a result, the work was put in hand by a boundary commission and the Provinces of Saskatchewan and Manitoba have, for their part, agreed, I understand, with the demarcation on the ground. This bill is to bring forth the assent of the Parliament of Canada as it deals with the boundaries between the provinces in question, and the Northwest Territories.

From the viewpoint of the Minister of Northern Affairs and National Resources, who is responsible for co-ordinating government activity in the Northwest Territories, I think I can say that he is aware of this matter and believes that the demarcation is a good thing.

The CHAIRMAN: That is, from the point of view of the Northwest Territories?

Mr. CÔTÉ: Yes, and for the Government of Canada.

The CHAIRMAN: Is not that because the jurisdiction in relation to this question of boundaries, so far as the Northwest Territories is concerned, lies in the federal Parliament?

Mr. CÔTÉ: That is correct.

The CHAIRMAN: And not in the Council of the Northwest Territories?

Mr. CÔTÉ: That is correct. Nevertheless, I have with me Commissioner Sivertz who can give the committee, if it so wishes, his view as commissioner as to whether this affects adversely or otherwise the interests of the territorial council.

So far as the federal Government is concerned, the minister, I am sure, believes that the actual demarcation of the boundaries on the ground is an important and wise thing to be done at this time, so that there may be eliminated in the future any possible disputes arising out of mineral claims or otherwise, as to the site of the boundary.

Senator POULIOT: Would you please tell the committee why there is not a bill for the boundaries of Alberta?

Mr. CÔTÉ: Mr. Chairman, this question was raised earlier. I believe it was settled by the boundary commission of 1954 or thereabouts—1952 to 1954—and while I do not have the information immediately at hand I think the Surveyor General does have it. There was an act passed by Parliament to cover that point.

Senator POULIOT: It is already settled?

Mr. CÔTÉ: It is settled so far as Alberta and the Northwest Territories are concerned.

Senator CROLL: Have we an act which gives the federal Government any authority to settle these disputes, or must it emanate from the provinces?

The CHAIRMAN: Section 3 of the British North America Act of 1871 covers this.

Senator CROLL: What does it say?

The CHAIRMAN: It says:

3. The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.

So the provinces affected by these bills are Manitoba and Saskatchewan, and you have acts of the local legislatures approving what is being done in this bill. We do not have such approval so far as the Northwest Territories are concerned because the council there has no jurisdiction in this matter. This jurisdiction lies in the federal Government. But in this instance the Provinces of Saskatchewan and Alberta have agreed.

Mr. CÔTÉ: They have agreed and there already is an act covering that. Saskatchewan and Manitoba are involved in these bills which are simply a continuance to complete the process.

Senator CROLL: What progress is being made with regard to the boundary line between Quebec and Newfoundland?

The CHAIRMAN: This is not relevant to the matter before us, but as a matter of general interest and without prolonged debate maybe Mr. Côté would like to answer.

Mr. CÔTÉ: It is a matter of policy on which I would like to reserve my views.

The CHAIRMAN: I thought you would answer like that.

Senator KINLEY: In what respect do you use the term second meridian?

Mr. CÔTÉ: In that matter I would defer to the Department of Mines and Technical Surveys and to the Surveyor General, who is here. He is better able to answer these questions than I am.

Mr. R. Thistlethwaite, Surveyor General, Department of Mines and Technical Surveys: The second meridian is one of the initial meridians established during the early dominion land surveys of the Prairie provinces. These are due north lines that run periodically across the provinces to form starting bases for the subdivision of these sections and quarter sections.

Senator CROLL: Is there a first and second meridian?

Mr. THISTLETHWAITE: Yes. They go right across the Prairies.

Senator KINLEY: You also say here the 60th parallel of latitude.

Mr. THISTLETHWAITE: Yes.

Senator KINLEY: This word meridian has such a general meaning, and you can only use this designation from the air. It is, I am told, inaccessible land. The boundary line between Manitoba and Saskatchewan is what in north longitude?

Mr. THISTLETHWAITE: I am sorry. Longitude is east and west.

Senator KINLEY: What is the longitude of the present boundary?

Mr. THISTLETHWAITE: In the north it is longitude 102—not precisely, but almost.

Senator KINLEY: When you say meridian, I suppose you mean a culminating point?

Mr. THISTLETHWAITE: The term meridian means a due north-south line.

Senator KINLEY: You have got the 60th parallel of north latitude. Why don't you have the 102nd parallel of north longitude, or the nearest to it? Why do you have this local term in a day when people are travelling in the area?

Mr. THISTLETHWAITE: These initial meridians of longitude, the initial, second and third, and so on, were meridians established in the early days upon which to base the subdivision of the Prairies into townships and sections.

Senator KINLEY: And you call them meridians?

Mr. THISTLETHWAITE: Yes.

Senator KINLEY: How do you define that word?

Mr. THISTLETHWAITE: It is a due north-south line.

Senator KINLEY: And that is 102 degrees west longitude?

Mr. THISTLETHWAITE: Almost, but not quite.

Senator KINLEY: You must excuse me. Coming from the east coast as I do and working on the sea, this term seems to be a little localized. Where is your other meridian if this is the second?

Mr. THISTLETHWAITE: They are spaced about two degrees apart.

Senator KINLEY: I just want to get information.

Senator CROLL: Why was the first meridian placed where it now is?

Mr. THISTLETHWAITE: I don't know whether I can answer that question shortly. It was a good place for a starting point for the old dominion lands survey system in the early days around Confederation or shortly after. This is part of the system recommended by the first Surveyor General back in Confederation times for a proper system of subdivision of the Prairies for settlement.

The CHAIRMAN: I think what Senator Croll is getting at is how it was settled from which point you would run the first meridian line.

Mr. THISTLETHWAITE: This was established back around the turn of the century to aid in the process of subdividing the Prairies.

Senator POULIOT: These are highly technical matters for laymen like myself, and I wonder if anyone could understand it without a map being shown to indicate what is the demarcation line and what is the boundary. When we talk about boundaries it is very difficult for us to understand figures when we don't see them written, and it is the same thing in this instance. I don't see how it can be explained without showing us a map. For Mr. Thistlethwaite it is easy because he has the map in his mind, but for me and perhaps for some of my colleagues who cannot see the whole thing in imagination it is difficult if we do not have a map.

Senator CROLL: I am not asking why it was done. That is your business and I am satisfied that you know what you are doing, but what I am asking and I am curious about are the underlying reasons for doing it in that way. Was that the centre of the country at that time or thought to be the centre? Is it that sort of division?

Mr. THISTLETHWAITE: Well, fundamentally, this meridian was defined as the boundary between the two provinces by Parliament at that time.

Senator CROLL: This would be at the turn of the century?

Mr. THISTLETHWAITE: At the time those provinces were established.

Senator McDONALD: You say it was a demarcation line between the provinces, but only at their northern extremities.

Mr. THISTLETHWAITE: Yes.

Senator McDONALD: The second meridian at the south end of the province is about 35 miles west of the boundary.

Mr. THISTLETHWAITE: That is quite true.

Senator POULIOT: Now, sir, I will ask you a general question, if you will allow me. We have ten provinces, and this legislation will affect two of them. What about the eight other provinces? Take, for instance, British Columbia. There is not much of that province that has a common boundary with the Northwest Territories; it is the Yukon. Then there is Alberta, and this bill is with respect to Saskatchewan and Manitoba. What about Ontario and Quebec? Is the boundary line fully determined by statute between the Northwest Territories and Ontario on the one hand, and Quebec on the other hand?

Mr. THISTLETHWAITE: It is defined by statute.

Senator POULIOT: By statute.

Mr. THISTLETHWAITE: Yes.

Senator POULIOT: And are there marks on the ground?

Mr. THISTLETHWAITE: No.

Senator POULIOT: There are no marks?

Mr. THISTLETHWAITE: No.

Mr. CÔTÉ: Perhaps I might answer that by saying that the Northwest Territories Act does define the boundary of the Northwest Territories, but the only part that has been delineated on the ground at the moment is that part between Alberta, Saskatchewan, and Manitoba, and the parts between British Columbia and the Yukon. There is an act covering Alberta, and this act is to apply to Saskatchewan and Manitoba.

Senator POULIOT: British Columbia does not touch upon the Northwest Territories. It touches upon the Yukon.

Mr. THISTLETHWAITE: It has a short common boundary with the Northwest Territories.

Senator POULIOT: But, I am interested in Quebec.

Mr. CÔTÉ: There is a statement in the Northwest Territories Act which sets out the boundaries of the Northwest Territories.

The CHAIRMAN: As to detail, that will be for another occasion. To the extent that it may be necessary to understand these bills—

Senator POULIOT: This is only part of a program that will be considered later on for Ontario and Quebec?

The CHAIRMAN: That is right. This is a serial story.

Senator FLYNN: There has to be an agreement between Quebec and Ontario to mark the boundary on the ground. That is why we have no bill here.

Senator MACDONALD (*Brantford*): Could I ask a general question, Mr. Chairman? Do I understand that so far as latitude is concerned it has reference to latitude not only affecting Canada but the whole world? For instance, the 49th degree of latitude is the boundary between Canada and the United States, and south of it, I take it, there is a 48th degree of latitude. With respect to meridians, have they been agreed upon throughout the whole world?

Mr. THISTLETHWAITE: This is a geographical concept. Meridians and parallels of latitude are altogether a system of reference lines for identifying the position of points on the earth's surface. It is a universal system.

Senator MACDONALD (*Brantford*): Well, then, we were mentioning a few minutes ago how we determined where this meridian would be. That had been determined geographically previous to the setting up of the boundaries; is that correct?

Mr. THISTLETHWAITE: Yes, that is true, and the second meridian was used in the definition of the provinces—this terminology was used in the statutes defining the provinces.

Senator MACDONALD (*Brantford*): So what you had to do was to determine on the ground where the second meridian was?

Mr. THISTLETHWAITE: Precisely.

The CHAIRMAN: This bill provides for the marking or charting on the ground the location of these meridian lines.

Mr. THISTLETHWAITE: That is it.

Senator KINLEY: It is like the old line fence.

The CHAIRMAN: I should give the committee the reference with respect to what the witness has said about meridian lines being used in the definition of

what area was included in a province. The members of the committee will find, for instance, in the Saskatchewan Act that part of the definition defining the territory includes a reference to the principal meridian line and the system of dominion lands surveys. So that even when they were defining the territories originally they defined them by reference in part to the meridian. This is all we are doing now, namely, attempting to give a reality on the ground.

Senator KINLEY: I think the 102nd degree on longitude is the boundary line, as I see it on the map now, between Manitoba and Saskatchewan.

Senator McDONALD: Only at the northern extremity.

Senator MOLSON: Mr. Chairman, you have just referred to the principal meridian. Which one is that?

Mr. THISTLETHWAITE: This is the initial meridian or the principal meridian which runs just east of Winnipeg.

Senator HAIG: West of Winnipeg.

Mr. THISTLETHWAITE: I am sorry; west of Winnipeg.

Senator MOLSON: Is it the first meridian?

Mr. THISTLETHWAITE: It is called the first or principal meridian.

Senator HAIG: The first meridian is about two miles west of Winnipeg. There is a marker on the ground on the Trans-Canada Highway stating where the first meridian is, and stating that that is where the survey of all the land in the west was started.

The CHAIRMAN: This is not what Senator Benidickson was referring to yesterday. When was this marker put in? Was it put there at the time the Trans-Canada Highway was built?

Senator HAIG: I do not know. I think it was put there about 25 or 30 years ago. It is an historic site now.

Senator MACDONALD (Brantford): May I ask the witness if the boundary line, or the 49th parallel of latitude, between Canada and the United States is marked on the ground?

Mr. THISTLETHWAITE: Yes, sir, it is.

Senator MACDONALD (Brantford): Right across, is it?

Mr. THISTLETHWAITE: Yes.

Senator MACDONALD (Brantford): And when you get into the mountains, what happens?

Mr. THISTLETHWAITE: It is also marked there.

Senator POULIOT: Mr. Côté, I do not want to interrupt my friend—

Senator MACDONALD (Brantford): No, I am finished.

Senator POULIOT: Have the provinces of Manitoba and Saskatchewan been consulted about this?

Mr. Côté: They have indicated their approval of this by a legislative act.

If I may complete the testimony, I will say that so far as Alberta is concerned, Mr. Chairman, I now have before me the act that was passed by Parliament regarding the boundary between Alberta and the Northwest Territories. This is of Elizabeth II, Chapter 23, assented to on January 31, 1958. This act is in language quite similar to that of the three bills now before the committee.

Senator POULIOT: Mr. Côté, I take it that as between Canada and those provinces with regard to that kind—

Mr. Côté: It is the Government of Canada which may legislate with respect to this with the consent of the provinces, and in these three cases the consent of the legislatures has been obtained; that is, in the case of British Columbia, Saskatchewan and Manitoba.

The CHAIRMAN: Are there any other questions? If not, shall we report, without amendment, Bill S-45?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall we report, without amendment, Bill S-46?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall we report, without amendment, Bill S-47?

Hon. SENATORS: Agreed.

The CHAIRMAN: That leaves for consideration Bill S-48. I think that what we should do this morning in connection with Bill S-48 is deal factually with the purpose and effect of the amendments, and then consider where we stand in relation to any constitutional aspects and any limitation on the power of the Senate to deal with certain money items.

Mr. Côté will you deal with this bill to amend the Canada Lands Surveys Act?

Mr. CÔTÉ: This is not within the responsibility of my department, sir. The Surveyor General will speak to this bill.

The CHAIRMAN: Then, you will come forward, Mr. Thistlethwaite.

Senator POULIOT: Mr. Chairman, what is the contentious clause in this bill?

The CHAIRMAN: There are no contentious clauses as such, but there are two clauses which in some way deal with money. The question is whether the Senate of Canada in the first instance has the authority to deal with those provisions, or whether they must first be introduced in the Commons, preceded by a resolution.

Senator KINLEY: Does the bill spend any money?

The CHAIRMAN: Let me answer that question by saying that I do not think the bill spends any money for which authority does not already exist.

Senator FLYNN: Are you referring to section 4?

The CHAIRMAN: In my last remark I was referring to section 3 of the bill. Possibly Mr. Thistlethwaite could deal factually with the provisions of the bill and then, if we wish to at that time, we can have some discussion on the position of the Senate. Would you go ahead, Mr. Thistlethwaite?

Senator MACDONALD (Brantford): I think the bill is quite clear, Mr. Chairman.

The CHAIRMAN: As a matter of fact, I think it is, too. Possibly then, Mr. Thistlethwaite could just indicate to us sections 3 and 4 of the bill and how they operate now in the statute as it exists. Would you do that?

Mr. THISTLETHWAITE: With your permission, Mr. Chairman, I think it is section 2 and section 3, perhaps, that we are referring to.

The CHAIRMAN: No, I am referring to section 3 on the top of page 2, which amends section 9 of the act.

Mr. THISTLETHWAITE: Well, section 3 refers back to section 2 of the bill, I believe.

The CHAIRMAN: Yes.

Mr. THISTLETHWAITE: And the purpose of section 2 is to authorize the engagement of ad hoc academic help for the board of examiners for dominion land surveyors.

There is a board of examiners comprising three civil servants in the Department of Mines and Technical Surveys who are fully occupied, of course, with normal duties, and they take care of the board work as extra work. Now, they are fully occupied and some of the current developments in mathematics and the physical sciences are becoming so rapid and so heavy that it is extremely difficult—difficult or impossible—for the board members to be au

courant with the academic subjects and sciences the whole year round so as to be able, periodically, to set the examinations once a year for the candidates who wish to enter the profession of land surveying.

Therefore, we would like to be able to recruit occasional help of university people, or people who are well versed in the sciences and mathematics, on a piecework, ad hoc basis, to assist the board by preparing some examinations and marking papers of the candidates who set these examinations.

Senator MACDONALD (Brantford): Do you contemplate remunerating these people for this work?

Mr. THISTLETHWAITE: This is the purpose.

Senator MACDONALD (Brantford): That is not set forth in the bill.

Mr. THISTLETHWAITE: This is section 3.

Senator MACDONALD (Brantford): Not in section 2.

The CHAIRMAN: No, not in section 2 of the bill before us.

Senator KINLEY: Does it involve the engineering qualifications of the people you hire, for instance? Must they be professional engineers?

Mr. THISTLETHWAITE: No, it refers simply to the process of examinations of candidates for the additional qualifications of dominion land surveyors.

Senator KINLEY: Can their work be accepted now without the qualifications?

Mr. THISTLETHWAITE: Not legally.

Senator KINLEY: Could you do it with this bill?

Mr. THISTLETHWAITE: No, this will not affect it.

Senator POULIOT: To your knowledge, is there any land surveyor in the examination branch of the Civil Service Commission?

Mr. THISTLETHWAITE: Not to my knowledge.

Senator POULIOT: Not to mine either.

Senator MACDONALD (Brantford): Coming to clause 3, I notice that the original clause 9 provided for the payment of fees for this work so far as making expenditures is concerned. I do not see that we are adding any amount in that respect.

The CHAIRMAN: Now, senator, maybe I should give you a little of the history. The Dominion Lands Act was originally passed in 1872, having at that time been introduced in the Senate. These particular sections—the sections dealing with the payment for examiners and also the fees that must accompany the application of a person who is going to sit for examinations—these sections were added to the bill in the Commons. There was no resolution preceding the introduction of the bill in the commons dealing with these items.

In 1951, the Act was revised and consolidated under its present name and a resolution preceded its introduction in the Commons to provide for “increased remuneration for the members of the Board of Examiners, the Secretary of the Board, and the Special Examiners.” In 1956, an amendment was introduced in the Commons to implement a resolution that “the members of the Board of Examiners be remunerated on an annual basis; also to authorize the Treasury Board to fix the fees to be paid to Special Examiners.”

So, actually, you have existing right up to the present time the authority for the expenditure of this money.

What this bill is doing in relation to section 9 of the original act, which is section 3 of the bill, is simply providing the lines that are underlined in the bill. You will notice that the original act provided for payment for each day of which such an examiner presided at an examination. He could be paid a fee and living expenses. You have an extension of that now to pay him for the work

performed in respect of the preparation and appraisal of responses, etcetera, and for the marking of papers.

In other words, it is enlarging the definition of the examiner's duties. The extension of these duties is extraneous to the purpose for which the Governor General has recommended an appropriation of public money—that purpose is simply payment of fees to examiners for, by implication, any of the necessary purposes of the Act. To my way of thinking, all the formalities required by law and custom have been observed in giving authority to this section. My own view at the present time is, in making an amendment of this kind, that the Senate has ample power to deal with this section; but I think it is something to which we should give some serious consideration. I do not suggest we should finish it today.

Senator ROEBUCK: It does not strike me, Mr. Chairman, that we should enlarge the definition so as to increase the amount of expenses.

The CHAIRMAN: Well, senator, you have the resolution authorizing the expenditure of money. If you say that does not go as far as the bill does, then, of course, you have item No. 1 in the Estimates, providing for administration expenses. Parliament has already provided that money. This is not making any specific charge upon the Consolidated Revenue Fund, and it may be that once Parliament has in the Estimates provided the moneys for general administrative purposes—and this comes under that heading—then we will have the authority to deal with it.

Senator POULIOT: By virtue of clause 2, which provides for the appointment, the man would be named. And in clause 3 the bill stipulates, without mentioning any amount, that that man would have the right to be paid.

The CHAIRMAN: That is right.

Senator POULIOT: It seems only reasonable, and the bill does not go far.

The CHAIRMAN: I have not completed any investigations that I have been making, but there seems to be a lot to support the view of distinguishing between making a particular charge upon the Consolidated Revenue Fund and the main purpose of the bill, which is not financial at all.

Senator POULIOT: It is opening the way for the estimates to establish the amount to be paid to that gentleman.

The CHAIRMAN: As I say, item 1 in the Estimates already provides for general administration.

Senator KINLEY: Mr. Chairman, the other day a bill went through remitting fees. Is there any question of that on the ground of public expenses?

Senator CROLL: We do that usually. It is normal.

Senator KINLEY: It is money being paid out that belongs to the country.

Senator FLYNN: It concerns only the Senate.

Senator CROLL: Mr. Chairman, you speak about giving the matter further consideration. I do not know what there is to consider, in the light of what you have said, what was said in the house, and the fact that the Leader of the Government, who is a member of the Cabinet, introduced this legislation in the Senate with their knowledge. I have no doubt there were discussions indicating their point of view. I do not see any difficulty about it at all. I think we ought to pass it now.

The CHAIRMAN: Except that this might be a good bill in which to try to resolve an issue which comes up periodically. Possibly the Department of Justice, who are the drafters of this bill, should be invited to make some submission on this.

Senator MACDONALD (*Brantford*): That might be the advisable course to pursue, but it does seem to me that it was never the intention that the Senate

could not make or pass legislation which involved the expenditure of money which had already been approved by Parliament, as in this case. If my memory serves me correctly, I believe the Senate can approve penalties for breach of an act—and that is a taxation on the public. If anyone is found guilty of a breach of an act, he will be subject to certain penalties. I am not too sure of this, but I believe the Senate has power to fix that penalty.

Senator ROEBUCK: There is no doubt about that.

Senator MACDONALD (*Brantford*): There are small amounts in this bill. Under clause 4 there is payment of \$10.

The CHAIRMAN: In my personal view, this is simply a service charge to defray part of the cost of providing the opportunity for and the supervision of examinations and it does not come in the category of a tax or an impost at all.

Senator MACDONALD (*Brantford*): No.

Senator CROLL: I do not understand why we should raise an issue on this, instead of dealing with it in a straightforward way. Let us have it performed and done, and if there is a reaction to it we will see what it is. I think we are on the proper course. Otherwise we would have to go into this matter and raise issues that never really existed. This is an opportunity to do something that we should have done in 1956 but did not do. We should let the matter ride and see what happens. If we were going to make it any stronger, by getting an opinion one way or the other, it would be different. We should decide to go ahead with it and await any reaction. I think it will be accepted as it stands.

Senator MACDONALD (*Brantford*): Is there any disadvantage in passing this bill as it is and sending it to the Commons? If the Commons take exception to it, they can send it back and we can reconsider it.

Senator KINLEY: Is there any disadvantage in delaying it?

The CHAIRMAN: How soon is this needed for the purposes of your administration?

Mr. THISTLETHWAITE: It is not critical at all.

Senator CROLL: It is critical for us.

The CHAIRMAN: When will the next board of examiners be sitting?

Mr. THISTLETHWAITE: They will be preparing another schedule of examinations during the coming fall and winter months, ready for examinations in February.

The CHAIRMAN: Mr. Ryan of the Department of Justice is here, but I realize it would be unfair to put this question to him, because he was not invited here in relation to this particular point. He has heard the discussion, in case we may decide to ask for an opinion. I am in the hands of the committee. My own views are fairly well known on this point.

Senator CROLL: I am in the mood to move that this bill be reported.

Senator MACDONALD (*Brantford*): My only hesitancy at the moment is that the Leader of the Government is not here. It is his bill.

The CHAIRMAN: I suggest we adjourn until, say, 2.15 and invite him to be present and give him some idea of what the committee is intending to do, that is, report the bill without any amendment.

Senator ROEBUCK: I would like to be as accurate as we can. I take the view that we should be accurate.

The CHAIRMAN: I take that view also.

Senator ROEBUCK: If the chairman decides on a short recess to look into this further, we should grant it.

Hon. SENATORS: Agreed.

Senator MOLSON: Before we adjourn, may I raise the question I raised in the chamber yesterday. I would like to ask the surveyor general why, when this original act was changed in title from "Dominion" to "Canada," the title of the surveyors did not follow that and they did not become "Canada Land Surveyors" instead of "Dominion Land Surveyors".

Mr. THISTLETHWAITE: I really do not know the answer to that. I was not in on this when the original Lands Surveys Act was evolved. I do not know what the reason is.

The CHAIRMAN: They would be just as qualified if they were called Canada Land Surveyors instead of Dominion Land Surveyors.

Mr. THISTLETHWAITE: So it seems to me.

Senator MOLSON: Would you see any difficulties or objections to that, apart from bowing to tradition, which we recognize?

Senator CROLL: Is there not a little more in it than that, in that the people concerned with this will always have to make an explanation that the Canada Land Surveyors are the same as the Dominion Land Surveyors? One will have to make a reference "in accordance with the Dominion Lands Surveys Act" as of a certain date, if you change to "Canada".

The CHAIRMAN: The statute is now the Canada Lands Surveys Act. We made it that in 1951. The only question arising out of what Senator Molson has said is—and I have not examined all the sections of the act—that the description may occur in other places than where it appears in this bill. We would be doing the job but partially by making changes in the bill. We would have to look at the act. Possibly we could do that in the meantime.

Senator MOLSON: It is quite possible that the term is used in a number of other acts. I would still ask, if the job was done in 1951 to change the name of the act, why there were not some other consequential changes such as changes in the titles of those engaged under the act.

Mr. THISTLETHWAITE: Mr. Ryan has just raised the point that some of the provincial statutes refer to Dominion Land Surveyors and this may be significant in this connection. They refer to the ability of Dominion Land Surveyors to do certain things within provinces and also qualify certain work by Dominion Land Surveyors.

The CHAIRMAN: I think we could overcome that, too. I notice that in the Revised Statutes, 1952, the Canada Lands Surveys Act refers back to the Dominion Lands Surveys Act, chapter 117 of the Revised Statutes of Canada, 1927. It also defines "Dominion Land Surveyor" as a person who holds a commission. If we were to do the job on the description, we would really have to examine the statute. It is not too big a job, so long as senators appreciate that.

In regard to the provincial statutes referring to "Dominion Land Surveyor," I am sure there could be a transitional provision put in this bill to deal with that, to state that wherever the title or description "Canada Land Surveyor" occurs this shall mean and include any person who carries the title "Dominion Land Surveyor". We will have a look at that when we are meeting again at 2.15.

The committee adjourned until 2.15 p.m.

—Upon resuming at 2.15 p.m.

The CHAIRMAN: We moved along in our consideration of this Bill S-48 this morning dealing with all the factual situations and also with the effect, or the possible effect of sections 3 and 4 of the bill, and the power of the Senate to enact those sections. I had indicated certain views at that time. We adjourned until 2.15 to ascertain just how Senator Connolly (Ottawa West) would feel if

we went ahead and reported the bill without amendment, in view of the speech he made in the Senate the other evening. I have had a talk with him since. He is not coming to the meeting. It is impossible for him to attend. What he really was looking for was some opportunity in connection with some bill to be able to define an approach or a qualification that the Senate might make, even in cases where it might be suggested that there are aspects of the bill which involve the appropriation of money, so that more bills could come to us, and what procedure we should follow in dealing with them without encroaching on that feature of appropriation of money. That was why he went to the length he did.

Further, he agreed we were right in assuming that if the Commons and a minister, or if the minister and the Legislation Committee of the Government, sent this bill over to us for introduction in the Senate, we could assume they were satisfied we had power to deal with it.

Therefore I would say so far as Senator Connolly is concerned, whichever way we deal with it, whether we enact it and let it follow the usual course or whether we delay and attempt to reflect further, will be all right. If I might repeat certain views I have without trying to impose on anybody else: there were two aspects of this which I considered. One deals with the fees under section 3 which the Treasury Board is authorized to pay to special examiners.

In 1956 there was an amendment to this act under which I think for the first time there was granted to the Treasury Board discretionary power to fix fees for special examiners. Before that, you had a statutory fixed fee, and you had this amendment enacted in 1956. That bill was introduced in the Commons and it was preceded by a resolution, and the resolution among other things gave Her Majesty the authority to pay those fees and to the Treasury Board, authority to fix fees to special examiners. Now, that was the broad language of the resolution. When you came to the bill itself it specified that there should be some limitations on the extent to which money would be paid. In other words, it said that the special examiners should be paid fees fixed by the Treasury Board for presiding at meetings of the Board of Examiners and their living allowances for that period.

Now, we have an amendment to that section which enlarges the work of the special examiners to include their work in respect of the preparation of examination papers in appraisals and the responses and provides for payment. My first point is that the resolution in 1956 which had no limitation is still broad enough to encompass what is proposed to be done in this bill; that is, you have a resolution in which Her Majesty gave authority to appropriate money for the payment of fees to special examiners.

The second thing I mentioned this morning was the fact that the first item in the Estimates is one dealing with general administration, and I think that that item is broad enough to cover any payments made under this bill because these payments are not made a charge on the Consolidated Revenue Fund.

The third question I raised is whether this being incidental to the main purpose of the bill, and being a payment for services, it is an appropriation of money at all, because under the Financial Administration Act the Governor in Council has the authority to pay for services where an act does not otherwise provide. That deals with the special examiners.

The amount of \$10 that is to be paid by an applicant who wants to sit and write an examination—it used to be \$1—does not involve the appropriation of money because it is the payment of a fee by somebody who wants to write an examination. Therefore, the only way in which our authority might be questioned would be if this fee of \$10 is of the nature of a tax or impost. If you look up the word "impost" in the dictionary you will see it is an obsolete word meaning the impressing or imposing on certain transactions a levy or a tax, and the typical illustration is customs duties. Tax, of course, involves a liability to

pay. Again, in the Financial Administration Act, I find that the Governor in Council may make a charge for services that are rendered unless there is some provision in the statute dealing with it. The Governor in Council may do that. I cannot, for the life of me, see, if this were a tax, why Parliament would be delegating the right to levy a tax to the Governor in Council.

Yesterday, Senator Hugessen, when I raised this question, said that this was only a service charge and incidental to the main purpose of the bill, and the money goes into the Consolidated Revenue Fund. All kinds of moneys go into the Consolidated Revenue Fund, and they are not taxes. A typical example of which I can think would arise in a prosecution under the Combines Investigation Act. In that case the federal authority takes all the proceedings and assumes all the responsibility, and then the statute provides that any fine that is levied is to be paid into the Consolidated Revenue Fund. I do not think that that fine would be described as being of the nature of a tax. Penalties are paid into that fund. In fact, I think it is the gathering pot of all of the revenues that the Government has. So, the fact that it goes into the Consolidated Revenue Fund does not add or take away anything from the determination of whether it is a tax.

My opinion is that we can deal with this, and we have the jurisdiction to deal with it. My own feeling would be that we should deal with it, and see what happens.

Senator CROLL: You have convinced me, Mr. Chairman, and I move that we report the bill without amendment.

The CHAIRMAN: Is there any discussion? Shall I report the bill? There is one other question raised by Senator Molson, having to do with the changing of "Dominion Land Surveyor" to "Canada Land Surveyor". This does make a lot of sense inasmuch as the title of the act is the Canada Lands Surveys Act, and yet the title "Dominion Land Surveyor" has been carried forward. The present consolidating and revising was passed originally in 1951. If we are going to make such a change in this bill then we shall have to look at the other sections of the act. There is a further point in that this description "Dominion Land Surveyor" occurs in many provincial statutes as a method of identifying the person who is recognized as being qualified for provincial purposes to do certain jobs. I understand, too, from Mr. Ryan of the Department of Justice that this may even extend to contracts which municipalities enter into, and townships, in connection with the doing of this kind of work, that is, people who may do it. One class would be a Dominion Land Surveyor.

I do not think it is impossible; surely we could draft something that would be transitional in order to move from one stage to the other, but it does look like writing a definition for provincial statutes, and I would rather consult them a little bit before I did it. But I have no particular feelings on it. How do you feel on it now, Senator Molson?

Senator MOLSON: I never had any particular feelings about it, Mr. Chairman, but I thought it showed certain signs of inconsistency in the previous action of changing the name of the bill and then leaving in the term "Dominion," which seems to have died a rather slow death in this country. Starting with the federal Government and right through, the word "Dominion" has fallen pretty much into disuse, and I just felt it would be somewhat inconsistent. However, I certainly had no wish to pursue it, and I have not got any great wish to push the matter at all.

The CHAIRMAN: If it is satisfactory, perhaps we could acquaint the minister and the Department of Justice with the fact that this question has come up, and they can have a good look at it.

Senator POULIOT: It will become a centennial project.

Senator MACKENZIE: One of the cheaper ones.

The CHAIRMAN: Let us put it this way: one of the less expensive.

Senator POULIOT: My suggestions are never costly.

The CHAIRMAN: I was only objecting to the word "cheap."

Senator POULIOT: I should say that it was Senator Molson's suggestion, and give credit where it is due.

Senator HEGESSEX: One of the next revisions of the general statutes would take care of it. They are every ten years or so.

The CHAIRMAN: I would think so. They are working on it now.

The motion, then, is that the committee report the bill without amendment.

Hon. SENATORS: Agreed.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 28

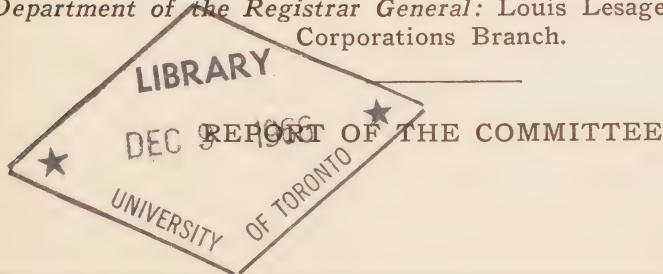
Complete Proceedings on Bill S-51,

intituled: "An Act to amend the Canada Corporations Act to facilitate the incorporation by letters patent of corporations without objects of pecuniary gain".

WEDNESDAY, NOVEMBER 16th, 1966

WITNESS:

Department of the Registrar General: Louis Lesage, Q.C., Director, Corporations Branch.



ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-Shelburne</i>)
Cook	Leonard	Thorvaldson
Croll	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Davis	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McDonald	White
Fergusson	McKeen	Willis—(50)
Flynn	McLean	

Ex officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 9, 1966:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Macdonald, P.C., seconded by the Honourable Senator McLean, for second reading of the Bill S-51, intituled: "An Act to amend the Canada Corporations Act to facilitate the incorporation by letters patent of corporations without objects of pecuniary gain".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macdonald, P.C., moved, seconded by the Honourable Senator McLean, that the Bill be referred to the Standing Committee on Banking and Commerce.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 16th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Baird, Blois, Burchill, Cook, Flynn, Gershaw, Hugessen, Irvine, Isnor, Kinley, Leonard, Macdonald (*Cape Breton*), Pouliot, Reid, Smith (*Queens-Shelburne*) and Thorvaldson. (17)

In attendance: R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief, Senate Committees Branch.

On Motion of the Honourable Senator Flynn it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-51.

Bill S-51, "An Act to amend the Canada Corporations Act to facilitate the incorporation by letters patent of corporations without objects of pecuniary gain", was read and considered, clause by clause.

The following witness was heard:

DEPARTMENT OF THE REGISTRAR GENERAL:

Louis Lesage, Q.C., Director, Corporations Branch.

On Motion of the Honourable Senator Flynn it was Resolved to report the said Bill without amendment.

At 10.10 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 16th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-51, intituled: "An Act to amend the Canada Corporations Act to facilitate the incorporation by letters patent of corporations without objects of pecuniary gain", has in obedience to the order of reference of November 9th, 1966, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 16, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill S-51, to amend the Canada Corporations Act to facilitate the incorporation by letters patent of corporations without objects of pecuniary gain, met this day at 9.30 a.m. to give consideration to the bill.

Senator **SALTER A. HAYDEN** in the Chair.

The **CHAIRMAN**: I call the meeting to order. Honourable senators, we have one bill this morning, S-51. As this bill is originating in the Senate, I suggest we have the usual motion that the proceedings be reported.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The **CHAIRMAN**: We have here this morning Mr. Louis Lesage, Director of the Corporations Branch, Registrar General's Department, with whom we are well acquainted. Would you agree that we should proceed in the usual way by questioning Mr. Lesage with respect to these various sections?

Hon. **SENATORS**: Agreed.

The **CHAIRMAN**: It is a very short bill, Mr. Lesage, so I presume we could go ahead section by section. In section 1 there is just one change, which you might deal with.

Mr. Louis Lesage, Q.C., Director, Corporations Branch Registrar General's Department: Mr. Chairman, honourable senators, the purpose of this amendment is to change, in Section 144 (1) the words "in more than one province of Canada" to the words "to which the legislative authority of the Parliament of Canada extends."

This is not new wording at all in the Canada Corporations Act. This is the language used in section 5 for companies with share capital. I have not been able to find historically the reasons for the inclusion of the words "in more than one province" in the previous text. Some doubt had been expressed in the department for at least 30 or 40 years on the jurisdiction of our department to incorporate some organizations, and especially some religious denominations or organizations, if they were not carrying on their activities in more than one province.

As a matter of fact, many religious organizations have to start within only one small place in one province. When they were coming to the department we knew that, because of the limitation of the then actual section 144, "in more than one province," we had no jurisdiction.

There was also the reason that there was a possible doubt on the jurisdiction of the federal authority itself. The Supreme Court of Canada case of *Saumur and Quebec City v. Attorney General of Quebec* 1953, decided, on a full bench sitting, that the matter of liberty of worship was falling under the ambit of the jurisdiction of the Parliament of Canada. The judgment was rendered on the basis of six to three. Six members of the Justices of the Bench held that this did not fall under section 92 of the B.N.A. Act, that is to say, Property and Civil rights, but was rather falling under order and good government in section 91.

The opinions of the judges in the *Saumur* case were really strictly divided, but the judgment was six to three and we feel that it has now the force of law and that, after 12 or 13 years, we can rely on this judgment which has never been tried again.

The reason that the wording of section 144(1) has been changed to read "to which the legislative authority of the Parliament of Canada extends," is that it is now placed on very safe ground.

Senator THORVALDSON: May I ask, Mr. Chairman, the year in which that decision was made?

Mr. LESAGE: 1953. I think. The case was heard in 1952 and was reported in 1953 Supreme Court Reports at page 299. It is a very long judgment. However, I have prepared some personal notes from the judgment itself and, if you want them to be put on record, you may have these personal notes.

The CHAIRMAN: I do not think we need that. I think we are all in agreement with respect to the change.

Senator FLYNN: The change would allow even for another decision, a contrary decision.

Mr. LESAGE: Of course.

Senator FLYNN: So it probably will not arise anew.

Senator BURCHILL: Most of the provinces have this legislation, have they not, with regard to provincial charters?

The CHAIRMAN: You mean private acts, provincially?

Senator BURCHILL: Yes. They do not have to come to Parliament.

The CHAIRMAN: If they are going to operate in respect of matters which are subject to federal jurisdiction.

Senator BURCHILL: I mean in a jurisdiction—

The CHAIRMAN: In a province.

Senator BURCHILL: Yes. Federally, we are behind the provinces.

The CHAIRMAN: No. Under the statute, as it presently is, you could have come to the Parliament of Canada for any of these objects that were enumerated, if you were operating in more than one province.

Senator BURCHILL: You would have to get the authority of Parliament.

The CHAIRMAN: No. This Part II of the Companies Act permits a letters patent incorporation, but the difficulty has been because of the use of the words "operating in more than one province". Companies that were going to have religious objectives or something within the compass of federal Parliament were not going to be operating in the beginning in more than one province. Therefore, the language startled them. They felt that if they were not operating in more than one province, the only way to deal federally would be to come to the federal Parliament and get a federal act passed. Now we are clarifying it so that they can come to Ottawa and get a letters patent company without the fear that they had previously.

There is one word here that bothers me, Mr. Lesage. It occurs in the present act. I am referring to the word "national". If you incorporate with national

objectives, what might those national objectives be, if they are not patriotic, religious, philanthropic, charitable, etcetera.

Senator LEONARD: Political.

The CHAIRMAN: Yes. They could be political.

Senator FLYNN: They could be anything, as you pointed out.

Senator LEONARD: Political organizations of a sporting character.

The CHAIRMAN: Did you say sporting or of a sporting character?

Senator LEONARD: Of a sporting character.

Senator THORVALDSON: Any matter associated with the centennial project could be described as a national project, could it not?

The CHAIRMAN: Well, I was thinking of the business of life insurance. As I mentioned in the Senate, if you have a mutual company which has no share capital and which is not being operated for gain, nevertheless, the Insurance Act requires it to be incorporated by special act. Now, are we broadening the field in that regard here? I do not know.

Senator FLYNN: In practice, what is the interpretation given by the department to this word "national"?

Mr. LESAGE: This word had a definite meaning in practice 50 years ago, I would say. However, because of the abuse of the word across this country since that time, I am afraid that it is now one of those words which are losing any legal meaning they might have had at one time. Nevertheless, I think it is worth keeping in there even though we do not rely very much on it. It would, in any event, fall under "like objects" of section 144.

Senator FLYNN: In fact, what you had in mind was something like "patriotic".

Mr. LESAGE: Exactly. That was almost the meaning of the word when it was put into the act perhaps 100 years ago. But the meaning of this word has deteriorated through the years, especially in Canada.

Senator FLYNN: It may be going a little too far to say that it has deteriorated.

Mr. LESAGE: I do not mean that the word has deteriorated, but that the meaning of the word has deteriorated. That is what I mean, Senator Flynn.

The CHAIRMAN: We are not suggesting that national feeling or national relationships have deteriorated, senator.

Senator HUGESSEN: Mr. Lesage, have you, in the course of your practice, had to give judgment on any organization which said it was a national organization?

Mr. LESAGE: No, senator, because most of them were for scientific or charitable purposes. They were coming under another topic; therefore, we never had to make use of the topic "national", although it is still there. Moreover, my opinion is that it should remain there, because it may be useful one of these days.

The CHAIRMAN: Is the committee prepared to approve subsection (1) of the new section 144?

Senator THORVALDSON: Yes, I wonder, Mr. Chairman, if I might just ask one question, however.

The CHAIRMAN: Yes.

Senator THORVALDSON: Do you consider it likely, Mr. Lesage, that some of these organizations which come to Parliament for private acts will be more prone to incorporate under this act than to incorporate under the Companies Act letters patent?

Mr. LESAGE: Of course. Yes, because the cost is going to be only \$25 instead of the great amount it is now. You know better than I do what are the costs of incorporating by special act. According to the statistics, you have had approximately 12 companies a year in the last six years. That is the average you have had in Parliament. We will expect to see more corporations than that, because all those will come, and then, in addition, so will those who were not daring to come to Parliament before. But those who did not dare to come before will come to us more easily.

After all, it is only an enabling amendment for those organizations to incorporate.

Senator THORVALDSON: I quite agree that it is a good thing. Indeed, I asked the question because sometimes I wondered why some of these people did come to Parliament for private acts, when they could have incorporated under the act as it was previously.

The CHAIRMAN: A little timidity, I think, in part.

Mr. LESAGE: Yes.

The CHAIRMAN: Section 2 of the bill deals with the present section 147 of the act, and section 147, as you will recall, makes certain sections of Part I of the Corporations Act apply to Part II companies. I notice that you are not affecting subsection (1) (a) of section 147, but when I look at (b), Mr. Lesage, although you have not underlined anything you have made an omission in reproducing subsection (b) from what it is in the act presently.

Mr. LESAGE: Yes. It is in the office consolidation, and it was not in the act, "except paragraph (t) of subsection (1) thereof." This was an omission in 1964-65, and this is the first correction. It was a mere clerical error.

The CHAIRMAN: But I notice in section 147 as it stands now, otherwise it is the same?

Mr. LESAGE: Yes.

The CHAIRMAN: All right. Then (c). Are there any changes there, except the underlined part—that is the only one?

Mr. LESAGE: It is only to render applicable the sections relating to the permission for these corporations without share capital to have and make use of a name having two forms, an English and a French form. This was an omission in 1963, and we take this opportunity to have this corrected.

The CHAIRMAN: Shall section 2 of the bill carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now we come to section 3 of the bill which repeals present section 147A and rewrites and re-enacts it simply to change the words as we did in section 144 from "in more than one province of Canada" to the words, "to which the legislative authority of the Parliament of Canada extends". We have approved of that principle with regard to section 144, so shall section 3 of the bill carry?

Hon. SENATORS: Carried.

Mr. LESAGE: This is clause 147A and 147B.

The CHAIRMAN: We are enacting a new section 147B. Would you care to explain that, Mr. Lesage?

Mr. LESAGE: The purpose of this section is to enable existing corporations without share capital which have already been incorporated by special act of Parliament to be continued under the letters patent system, and the most important feature of this I would like to draw your attention to, gentlemen, is that the instrument of incorporation of those organizations remains the special act; and if, for instance, the Anglican church or an Anglican bishop of Montreal

or Quebec City or Toronto, or a Catholic bishop, has been incorporated by way of a special act, as the case may be, then it may be continued under the letters patent, but the continuation of the letters patent will not have the effect of superseding the act but only to continue it under the letters patent system. If they want some amendments to their legislation instead of having to come to Parliament for slight amendments, they will have the opportunity to take advantage of the letters patent system, which is far more flexible and less costly and relieve at the same time Parliament of an undue burden. This is the purpose of that legislation.

Senator FLYNN: Would it apply to corporations which may eventually be created by an act of Parliament; or does it apply only to the corporations which have already been incorporated by special act?

Mr. LESAGE: I think the act does not use the past tense. They say, "incorporated by special Act"—if you refer to section 147A—"to any corporation without share capital incorporated by special Act . . ." The word is, "incorporated"; it does not say, "which has been incorporated" but "incorporated", so I think it would apply to even those who would come thereafter to Parliament, and they would have the same opportunity to ask to be continued under letters patent, and this would never prevent them coming back to Parliament if they felt it necessary for certain purposes to have a special act—for purposes I cannot imagine at the present time, but any one or any corporation has always the right to pray Parliament.

Senator FLYNN: The effect would be, of course, to avoid the necessity of coming to Parliament for—

Mr. LESAGE: Small matters.

Senator FLYNN: Yes, small matters.

The CHAIRMAN: I question "small"—for all matters of change, whether it is extension or limitation.

Senator FLYNN: That is right, I agree. I think the word "small" was erroneous. In the house I posed the question whether the same thing could apply to corporations with share capital incorporated by act of Parliament, like a pipe line company.

Mr. LESAGE: Senator Flynn, this is a very good question. I have to tell you the purpose of this bill is not to open the Canada Corporations Act wide. It is contemplated—and this is no secret, I think, as the Prime Minister has indicated—that some changes are going to be made, and this suggestion of yours is being studied. I do not know what is going to happen more than any ordinary citizen, of course, but I know that consideration is being given to this problem, just as to many other problems.

Senator FLYNN: Technically, it could be done?

Mr. LESAGE: Yes, I think so. I think technically, but this presents many difficulties. For instance, in the case of pipe line companies it is a very difficult problem, because we could not in this bill come with an amendment to enable the department to issue letters patent incorporating pipe line companies, not because of the Canada Corporations Act but because of the National Energy Board Act.

Senator HUGESSEN: That is the act which has to be changed?

Mr. LESAGE: Yes, that is the act that has to be changed. Whether this would be done or not is a matter of policy. You have the same with loan companies, trust companies, insurance companies and railway, telephone and telegraph companies. But in the case of pipe lines, it is a different problem than it would be in other cases, and this would mean we would have to study not only the Canada Corporations Act but also other legislation.

However, with the bill we have which is before you gentlemen this morning, there was no question of opening any other bill, and the wish of the Government, as I understood it, was to enable Parliament to give authority to the department for as many as possible as quickly as possible, and this means half of the private bills which come before Parliament.

Senator FLYNN: I agree it would be without the ambit of the present bill.

Senator HUGESSEN: Just on that question, Mr. Chairman. Would you mind indicating—and perhaps you feel you should not reply—are they studying the question of pipe line bills being incorporated by letters patent?

MR. LESAGE: We have authority to incorporate pipe line companies by letters patent, but the National Energy Board has no authority to permit them operate unless the corporation is incorporated by special act.

Senator HUGESSEN: It is contemplated changing that?

The CHAIRMAN: That is a matter of policy.

Senator HUGESSEN: You said a submission is being considered.

MR. LESAGE: I do not feel qualified to give that answer.

The CHAIRMAN: Could I mention the question of advertising? I mentioned earlier in the Senate that to the extent that you had people coming in seeking incorporation by private act and in the case of a company with religious objectives they were required to advertise in local papers before coming in and it would appear in many instances that this publication would serve to alert people coming in and where there are conflicts changes can be made to meet the conflicting situation. There is no advertising required to incorporate a company under Part II of the Companies Act. And that is where we were proposing to push all these companies who have these objectives. I had voiced the feeling that maybe we should express some opinion with regard to this advertising.

Now, that may present problems because we have to make it of general application to all the objectives for which you can incorporate a Part II company. We would be distinguishing between companies which operate in more than one province and those operating in only one province. That may be a practical problem. But then it occurred to me that perhaps section 8 of the bill which is applicable to Part II companies might be broad enough to give Mr. Lesage the power in that direction if he wanted to exercise it. What comment have you to make on that? I think under section 8 of the bill which entitles the Secretary of State to require to be satisfied as to the sufficiency of the application and the truth and sufficiency of the words and even to refer the matter to get requisite evidence that that discretion is so broad that he could require advertising in a local paper. What comment have you to make?

MR. LESAGE: I am afraid that it is still not broad enough and still not specific enough. If we were going to require that we would delay some urgent incorporations. In the case, for instance, of foundations, private foundations, or in the case of a gentleman who is preparing his last will or has died only a few days ago and it is urgent that a foundation be created, if we were imposing a further delay it might cause some damage.

The CHAIRMAN: I was only suggesting that in the exercise of your broad discretion under section 8 you could in a particular case satisfy yourself by advertising. I am not saying that it should be made a general rule, and I am open to comment on that. I am not firmly fixed on it.

MR. LESAGE: I am afraid, Senator, I and my successors in duty would find ourselves in a pretty hot seat if we were going to discriminate in our procedure. In one case you are going to publish while in another case you have the authority to exempt. I am satisfied that section 8 (2) for the time being is broad enough to give us the facilities of obtaining the required evidence without the publication,

because if we start without publication there is going to be an uproar from some people who will say "What are you going to do? Are you going to require publication in papers and so forth?" I would prefer to take a calculated risk because I don't think there is any risk at all, but I think we are better to operate on another basis as we do for some organizations when we ask the advice of experts of other departments.

The CHAIRMAN: All I did was to call attention to it. Maybe in a fuller revision of the act, which I understand is coming later, we can have another look at that.

Senator BURCHILL: Under section 1 every company seeking incorporation is bound to advertise.

The CHAIRMAN: As a letters patent company they would not be bound to advertise.

Senator BURCHILL: But coming under Parliament?

The CHAIRMAN: Yes.

Senator BURCHILL: In the event of a protest, what is the object of the advertisement—to alert people?

The CHAIRMAN: Yes.

Senator BURCHILL: If anybody wants to protest they have an opportunity of doing so?

The CHAIRMAN: Yes.

Senator BURCHILL: And they protest to Parliament, don't they?

The CHAIRMAN: Yes.

Senator BURCHILL: In this case whom would they protest to?

The CHAIRMAN: The Register General.

Senator BURCHILL: He would have to have the authority to deny an application?

The CHAIRMAN: That is right.

Senator HUGESSEN: Don't most of these protests arise out of the name?

Mr. LESAGE: Yes.

The CHAIRMAN: It sometimes arises where you have conflicts.

Senator HUGESSEN: You have a lot of experience in dealing with names, and you could deal with charitable organizations as you deal with commercial organizations. Supposing you did by mistake permit a name and it was published, you could if necessary force incorporation under another name?

Mr. LESAGE: In recent years we always came to agreements. We always try to come to agreements, and I cannot recall in the past ten years any case where we have really imposed the name. We tell the people the difficulties in which they have placed themselves, and we suggest that within three weeks or a month they should submit another name which would be less objectionable. In the past ten years, so far as I can recall, there has been no real difficulty which has required departmental action as authorized in the act.

Senator HUGESSEN: I was speaking in connection with Senator Burchill's point. Supposing you did grant a name by letters patent which was objectionable, you could always make them change the name later on?

Mr. LESAGE: We have such authority.

Senator FLYNN: There is no provision in the act for publication in the *Canada Gazette* such as is required in the Province of Quebec?

Mr. LESAGE: There is provision for publication afterwards.

Senator FLYNN: Is there a notice in the *Canada Gazette*?

Mr. LESAGE: After. This is done all the time.

The CHAIRMAN: But they could still come back.

Senator LEONARD: That publication is still continued?

Mr. LESAGE: Yes.

The CHAIRMAN: Are you ready for the question?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee adjourned.



First Session—Twenty-seventh Parliament

1966

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

No. 29

Complete Proceedings on Bill C-218,
intituled: "An Act to provide assistance to livestock feeders in
Eastern Canada and British Columbia".

THURSDAY, NOVEMBER 17th, 1966

WITNESSES:

Department of Forestry and Rural Development: The Honourable Maurice
Sauvé, Minister; J. M. McDonough, Supervisor, Feed Grain Assistance
Programmes; Department of Justice: F. E. Gibson, Legislation Sec-
tion.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i>
Cook	Leonard	<i>Shelburne</i>)
Croll	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Davis	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	McCutcheon	Vien
Farris	McDonald	Walker
Fergusson	McKeen	White
Flynn	McLean	Willis—(50)

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 16, 1966:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Deschatelets, P.C., for second reading of the Bill C-218, intituled: "An Act to provide assistance to livestock feeders in Eastern Canada and British Columbia".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNeill,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, November 17th, 1966

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 3.50 p.m.

Present: The Honourable Senators Leonard (*Acting Chairman*), Aseltine, Beaubien (*Provencher*), Benidickson, Blois, Connolly (*Ottawa West*), Farris, Gershaw, Haig, Irvine, Isnor, Kinley and Smith (*Queens-Shelburne*). (13)

Present, but not of the Committee: the Honourable Senator Hays.

In attendance: R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief, Senate Committees Branch.

On Motion of the Honourable Senator Aseltine it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-218.

Bill C-218 "An Act to provide assistance to livestock feeders in Eastern Canada and British Columbia", was read and considered.

The following witnesses were heard:

Department of Forestry and Rural Development:

The Honourable Maurice Sauvé, Minister.

J. M. McDonough, Supervisor, Feed Grain Assistance Programmes.

Department of Justice:

F. E. Gibson, Legislation Section.

On Motion of the Honourable Senator Kinley it was *Resolved* to report the said Bill without amendment.

At 4.40 p.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, November 17th, 1966

The Standing Committee on Banking and Commerce to which was referred the Bill C-218, intituled: "An Act to provide assistance to livestock feeders in Eastern Canada and British Columbia", has in obedience to the order of reference of November 16th, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

T. D'Arcy Leonard,
Acting Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE EVIDENCE

OTTAWA, Thursday, November 17, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill C-218, to provide assistance to livestock feeders in Eastern Canada and British Columbia, met this day at 3.50 p.m. to give consideration to the bill.

Hon. T. D'ARCY LEONARD (*Acting Chairman*) in the Chair.

The ACTING CHAIRMAN: Honourable senators, will you please come to order. If it is agreeable we shall deal first with Bill C-218, an act to provide assistance to livestock feeders in Eastern Canada and British Columbia. We have with us as witnesses Mr. F. E. Gibson, Department of Justice, and Mr. J. M. McDonough, Feed Grain Administration, Department of Forestry. There is some expectation that the Honourable Mr. Maurice Sauvé might still be able to appear in committee before our proceedings are finished. May I have the usual motion for the printing of the proceedings?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The ACTING CHAIRMAN: Before Mr. Sauvé arrives I shall ask for an explanation of the bill by Mr. McDonough.

Mr. J. M. McDonough, Feed Grain Administration, Department of Forestry: Honourable senators, I would ask you to please bear with me because I was rather caught off guard in being asked to make any comments on this bill today.

The ACTING CHAIRMAN: If you would prefer to wait and have questions put to you it is all right, but it would be better to have some sort of preliminary statement given to the committee.

Mr. McDONOUGH: Honourable senators, the intention of this bill is to provide a board which will co-ordinate the movement of feed grains into eastern Canada and British Columbia, and to investigate some of the problems which occur from time to time on the movement of feed grains in the water ports, and to try and bring about stabilization and equalization in feed grain pricing. The bill provides for the establishment of a board to be known as the Canadian Livestock Feed Board, to consist of from three to five members, and for the formation of an Advisory Committee, to consist of from five to seven members.

The objects of the board are to ensure the availability of feed grain to meet the needs of livestock feeders both in eastern Canada and British Columbia, the availability of adequate storage space, and reasonable stability in the price of feed grains in eastern Canada and British Columbia, and fair equalization in feed grain pricing.

The ACTING CHAIRMAN: May I interrupt for a moment? The Honourable Mr. Sauvé is now present. Mr. McDonough, would you mind if the minister now proceeded with his explanation?

Mr. McDONOUGH: Certainly, Mr. Chairman.

The ACTING CHAIRMAN: Honourable senators, the Honourable Mr. Sauvé has another appointment so that I will ask him to come forward and explain the bill that Mr. McDonough was doing so well. Mr. Sauvé, we are very pleased to have you here. I do not know whether this is the first occasion when you have appeared before the Senate Committee on Banking and Commerce in your present capacity; in any event, we welcome you here.

Honourable Maurice Sauvé, Minister, Department of Forestry and Rural Development: Mr. Chairman and members of the Senate, I was pleased to accept the invitation to attend your committee meeting and say a few words about this bill, which was being explained by Mr. McDonough before my arrival here.

The most important feature of this legislation is that for the first time we will have legislation which will authorize the federal Government to do on a permanent basis what had to be done each year through the Estimates.

As you are aware, there are two parts to this bill. The first one provides for the payment of transportation costs of grain from the Lakehead to eastern destinations, and from certain western points to British Columbia. This had to be done, previously to this bill, on an annual basis through Estimates, and the farmers never knew if we would pursue our policies from one year to another. This bill gives assurance to the farmers that the policy will be on a permanent basis.

The second feature of this bill is the creation of a feed board which will ~~authorize the policy I have been mentioning~~, and which will also be authorized, if need be, to become a broker in the feed business. This means the board will be authorized to buy and sell grains in certain circumstances which will have to be decided by the board. We intend to normally proceed by buying on the Grain Exchange in Winnipeg as a normal broker. We do not intend at all to deal directly with the Wheat Board, and one of the reasons for this was that it was felt that if the Canadian Livestock Feed Board was to negotiate directly with the Canadian Wheat Board, the Government would have to be in a position afterwards to act as an arbitrator between two Government boards. The board will have to be authorized to act in its capacity as broker in respect to each crop year. There will be an order-in-council authorizing the board to do this.

These are the main features of the bill. It has been supported, as you already know, by all political parties in Canada since at least 1960. It was to be introduced in the House of Commons by the former Minister of Agriculture in the previous Government, Mr. Hamilton, on February 6, 1963, which was the very day following the defeat of the Government. So, there has been support in the house, as you have been able to read in *Hansard* of the other place, and farmers' organizations and others, generally speaking, are agreeable to the terms of this bill. The bill was introduced in June, so we had time to circulate the text, and I do not think that we have received any unfavourable comment. It has been circulated to all interested parties: people in the trade, farm organizations, wheat pools, government organizations, and so on.

This does not solve all the problems of the eastern farmers, and eventually we will need to establish in Canada a national agricultural policy. As long as we do not have such a policy, what we intend to do under this legislation is probably the best we can do, with respect to livestock feeders in eastern Canada and

British Columbia. I would hope that it would be possible for the federal Department of Agriculture and the provincial departments of agriculture to meet one of these days to arrive at a national agricultural policy, and determine what can be produced economically at what price, what the consumer should pay, and what are the various administrative authorities that should deal with agricultural production.

There is talk of such a policy being devised, but it takes time, and I would hope that honourable senators would not think that through this bill, C-218, we are putting an end to all the requests of the farm organizations in eastern Canada for better farm policies. I think that we are doing something which is of great help, but it is only a partial solution to an extremely difficult problem.

Mr. Chairman, that is about all the essential matters I wanted to cover.

The ACTING CHAIRMAN: Thank you, Mr. Minister. Are there some questions now?

Senator CONNOLLY (*Ottawa West*): I think I should tell the minister that we had an excellent debate on this in the house. We heard speakers from both western and eastern Canada, senators who spoke about the problems of the breeders and growers.

The ACTING CHAIRMAN: And from Ottawa we had a speaker!

Hon. Mr. SAUVÉ: Yes, I found out the Senate house leader was a good farmer with this brief. I read part of what was said in the Senate, and I was very much impressed by this statistical information which was provided members of the Senate but which, unfortunately, the members of the House of Commons did not have. Probably it was better for me, because it might have been difficult for me to give all the answers to specific questions on those figures, but it was a good debate, what I read of it I think we also had a good debate in the House, although it was of a different nature.

Senator CONNOLLY (*Ottawa West*): A very good one, if I may say so. As a matter of fact, the Senate gave the House of Commons full credit for having had a good debate.

Senator ASELTINE: We certainly had a good debate.

The first question I would like to ask the minister is: Who pays the cost of this board that is being set up by this bill? Do the farmers and stock raisers pay the shot, like we do in Saskatchewan? We pay all the expenses of the Wheat Board.

Hon. Mr. SAUVÉ: You have to make a distinction. If the board acts as a broker all the operations will have to be paid through the sales of the board as an agent, as a broker. It will be paid by the farmers, in the sense the buyers will have to pay the cost of operations, credit and other costs that are incorporated in the transportation, and so on. If the board acts as an office of the Government to pay the transportation subsidies, then all this will be paid directly from votes by Parliament.

The commercial operation of the board will not be a charge on the people of Canada, but a charge on the buyers. The subsidy operations will be paid by Parliament, as they are now paid, except we do not now have a board. This board will operate on exactly the same basis as the Canadian Wheat Board when it comes to its commercial operations.

Senator ASELTINE: Another question, Mr. Chairman. Has the Government or the department involved received any complaints from the farmers and stock raisers in western provinces? I have heard many complaints that this is discriminatory. In this regard, take a farmer or stock breeder residing in the

northern part of Alberta, if he wants feed from Manitoba he has to pay the full rate on that feed from there to his ranch in northern Alberta. Whereas a farmer stock breeder in eastern Ontario gets this subsidy. When this farmer sells his cattle he has to pay the full freight, probably to Ontario or Quebec where they are sold. In that way, by their getting this subsidy in regard to freight rates and a farmer having to pay the full rate—he does not get the Crows Nest Pass rate, but pays the full freight rate when he buys feed in western Canada and having to ship his cattle way down to Ontario, in contrast with others he feels that he is being discriminated against.

I wonder if the department has any knowledge of that, or whether it has been brought to their attention in any way, or whether there is any solution.

Hon. Mr. SAUVÉ: Yes, there was a committee of the House of Commons on this problem of feed grain. Interested parties came and explained to members of the House of Commons committee the problem you are raising.

I think a number of corrections are necessary to the statement you made. If this farmer buys his feed in Alberta his feed is much cheaper than if he buys it from another province, and much cheaper than the cost of grain that is bought in Winnipeg by the eastern broker.

Senator ASELTINE: Why is that?

Hon. Mr. SAUVÉ: Because the grains that are handled for provincial consumption are not submitted to the Wheat Board control, and they do not sell at the same price. In fact, I am not sure of the figure, but I think—Mr. McDonough could tell me—grain produced in Alberta and bought by a farmer in Alberta would cost about 50 per cent—

Mr. McDONOUGH: Something around that figure, Mr. Sauvé.

Hon. Mr. SAUVÉ: About half; at any rate; it would cost much less than the cost of grain in Winnipeg, because the Wheat Board sells for the international market, and we are paying the international price there.

The second correction to the statement which has been made is that the grain for export is transported in Canada at a lower cost than domestic grain so, in fact, the Canadian people are subsidizing the western grain to eastern ports. We have asked for some figures on what is the amount of money that is involved, this is very difficult to establish, but I would think it is substantial that we, the Canadian people, because of those special rates for export grain, are already subsidizing the western farmers.

The third point is that in eastern Canada we cannot produce all the meat we need and, although I am not an expert in this field I would think the prices are determined by supply and demand. I do not think that the western farmer is at a distinct disadvantage, even if he has to pay the transportation cost of the carcasses that are sent from western Canada.

Senator ASELTINE: It costs him a lot of money to ship cattle to Toronto.

Hon. Mr. SAUVÉ: Yes; but because we are not able in eastern Canada to supply all our needs in meat, in fact the price is a little higher than it would be if we could supply everything here.

So when you try to establish whether it is advantageous or disadvantageous, you have to take into account all these factors. That is why I said originally we need a national agricultural policy.

Senator ASELTINE: Do you think the board will be able to answer all these problems?

Hon. Mr. SAUVÉ: No, the board only answers partially the problems. We need a national agricultural policy in which we would decide where are the most

economic productions in Canada, and how we should regionalize our agriculture to include this problem of transportation.

I have been arguing for this, and Senator Hays, when he was Minister of Agriculture, was becoming convinced of the necessity of such policies also.

I feel the time must come in Canada for a meeting of minds between provincial and federal governments and between farm organizations and others, so we can prepare a white paper for the next ten years deciding what we really want. I do not want to go into detail on this white paper, because I have made statements on it already. It is very important, because the problems you raise will always come back. There are a number of people in eastern Canada who have made large investments in farms since 1941, and if we were to stop this policy abruptly we would find ourselves in very serious difficulty.

There is ground for believing that the farmers in the west have some justification for saying that we are probably paying subsidies in amounts that could be termed unfair competition, but when everything is taken into account I think this is a fair deal for both eastern and western farmers. We must not forget that eastern farmers cannot import grain from outside of Canada because authority from the Canadian Wheat Board is required.

Finally, the price of their grain is calculated on a basis that is indirectly a benefit to the western farmers. This policy, I think, benefits both eastern and western farmers when one considers all of its aspects.

Senator KINLEY: Mr. Chairman, I have been interested in feed grains for many years. I heard Senator Pearson bring this matter up, saying that the freight assistance on feed grains was discriminatory. I heard that a long time before from Senator Horner. It seemed to me to be a peculiar philosophy when people did not want to sell their product unless they got the best price.

However, I think we should grow more grain in Nova Scotia. I agree with Senator Blois. The Nova Scotia government is now subsidizing the growing of coarse grains in Nova Scotia. This is a good policy, but Senator Blois does not think it is enough.

With respect to this being discriminatory, as you say, we buy our meat from western Canada, and we also buy flour from western Canada. I am told that the price of flour and wheat in Canada is higher than it is on the export market. In order to protect the farmer in times past we have made the Canadian people pay more for their flour and feed.

I always thought that the big meat market on this continent was in Chicago, and they are closer to the western provinces than we are, so it does not apply to the maritime provinces. Last night I had a very interesting talk with a farmer's wife from Alberta. She was here for the Tory convention. I asked her about the beef and to where they shipped it, and she said: "We ship it to Edmonton". It appears it all goes to the packers in Edmonton.

However, as you know, in Nova Scotia we feed a lot of fish meal. Fish meal is good protein. I think they ship it even to West Germany.

The supplying of fish meal is keeping the fishing industry going. They do not throw away the offal anymore. We do not like to use it much for hens because it might affect the taste of the eggs, but for beef it is splendid. It is used also for fertilizer. But, I think we should raise more grain in Nova Scotia, and we are working towards that end.

I was interested in the milling company some 40 years ago which imported corn from South Africa. It was splendid corn. We milled it in Bridgewater, Nova Scotia, and sold it all over the country. We do not get it now. I think something was done to stop the importation of that corn into Canada.

This is a good bill. It is a splendid bill, because if they have a wet season in the west they will be very glad to sell their coarse grains somewhere for feed. That has happened many times. If they get a drought and poor wheat, what are they going to do? There seems to me that there should be no complaint about the Maritimes getting the advantage out of this, because it is really beneficial to both parts of the country.

The ACTING CHAIRMAN: Thank you, Senator Kinley. I take it that you were not asking a question, but merely continuing the discussion. I wonder if Senator Hays has a comment to make?

Senator HAYS: I did not make a speech in the debate on this bill in the Senate.

The ACTING CHAIRMAN: We set precedents here, though.

Senator HAYS: I think this is a good bill, and that it will help to regulate or stabilize the market, and take out the ups and downs, and that sort of thing. This is the important part of the bill.

I often wonder whether a subsidy is the proper approach. As the minister has indicated today, in so far as soft corn is concerned, you can make a pound of meat for about 12½ cents. It costs us in Alberta about 17 cents to make a pound of meat, using barley and oats, and that sort of thing. I have often wondered how much feed grain is needed to produce a dozen eggs. It takes seven pounds of grain to make a pound of meat. We are paying \$10 to make a steer weighing from 500 to 1,100 pounds. They receive 2½ cents a pound more for that steer in Montreal, or \$25; they have the benefit of receiving roughly \$35 more for a steer than we would receive in, say, the Calgary yards or the Edmonton yards. This all relates back to the cost of a dozen eggs, or a quart of milk.

This grain in western Canada is generally priced by looking at what corn can be imported for after paying the duty. There is no other way of pricing it. It seems to me to be this way. I think the minister has probably done so well that we shall have to take a whole new look at this, because I suppose the subsidy into Newfoundland—what is the subsidy into Newfoundland today on feed?

Mr. McDONOUGH: It is \$17.40 to the Avalon Peninsula.

Hon. Mr. SAUVÉ: Yes, it was reduced by \$7.60 about a month ago.

Senator HAYS: This helps the sale of western grain. This year I think we produced about 700 million bushels of wheat, 400 million bushels of barley and from 300 to 325 million bushels of oats. The feed grains shipped to the east represents a very small portion—what is it—85 million bushels?

Hon. Mr. SAUVÉ: The total consumption of feed grains in eastern Canada? I think it is about 100 million bushels a year.

Senator HAYS: Yes, it is between 80 million and 100 million bushels. It would be interesting to know how much we are subsidizing a dozen eggs in Newfoundland or Nova Scotia and how much we are subsidizing 500 pounds of meat. This is bound to be discriminatory. I think we all recognize that. As Senator Aseltine has pointed out, if you can grow corn today you can produce meat much cheaper than you can by feeding coarse grains. I think this should be a short term sort of thing, and that there should be a good look taken at the feed grain situation and its subsidization. I do not think there is any doubt about that.

Senator CONNOLLY (Ottawa West): The board is empowered to do that.

Hon. Mr. SAUVÉ: It is not strictly the responsibility of the board, because the national agricultural policy comes into it. The Department of Agriculture will have to work with the provincial departments of agriculture, and everybody

concerned in Canada would be involved—the Canadian Wheat Board, this board, and other organizations.

Senator HAYS: But we get back to the point where we need 4,000 pounds of feed to make 500 pounds of meat.

The ACTING CHAIRMAN: That question is out of the jurisdiction of this board that is being set up?

Hon. Mr. SAUVÉ: It comes within the national agricultural policy. The board can only administer the transportation subsidy, and buy and sell grain for the eastern provinces and British Columbia.

Senator HAYS: We spend \$20 million in shipping feed down to eastern Canada and to subsidize the producer when corn can be placed there at five cents a pound less than the price per pound of meat we produce. I do not know how this relates to milk.

Hon. Mr. SAUVÉ: I do not know what proportion of grain goes for production other than meat production.

Senator HAYS: I suppose a big percentage of it is for dairy products. This would be the largest by quite a bit.

Senator CONNOLLY (*Ottawa West*): Yes, these tables seem to indicate that.

Senator ISNOR: Can you tell us, Mr. Minister, what is the quantity percentage-wise that is exported?

Senator SMITH (*Queens-Shelburne*): Do you mean feed grains?

Senator ISNOR: Yes.

Hon. Mr. SAUVÉ: Referring to Table 34 on page 12 of this document, from the figure for the first item "Wheat", it is difficult to establish what is the amount that is exported for feeding purposes and for human consumption out of the 400 million bushels in 1964-65. However, you can see under "Oats" and "Barley" that we exported 15 million bushels in 1964-65, and 37 million bushels of barley in 1964-65. You can compare this to freight assistance in the right-hand column, and you have an indication of what it means to the western farmer.

Senator ISNOR: I was asking that preliminary question to lead up to another one in regard to export. I notice that this table just gives Ontario—

The ACTING CHAIRMAN: Where are you reading from, Senator Isnor?

Senator ISNOR: I am looking at Table 5 at page 2. It shows Ontario, Quebec, the Maritimes, Newfoundland, and British Columbia. I asked the question of the honourable Leader of the Government (Hon. Mr. Connolly) in the Senate, and he was good enough to provide a breakdown of the Maritime provinces. I think, Mr. Minister, that in future you should show the Maritime provinces separately in order to give a clearer picture and to answer what I am asking, namely, the assistance to such places as Nova Scotia, New Brunswick, and Prince Edward Island in so far as export business is concerned. I broke down the figures for Nova Scotia and found a very large decrease, if I remember rightly. Unfortunately I do not have the table with me, as I sent it down to Nova Scotia to a better-informed authority than myself. I was wondering about the decrease, and I was relating it to the export business from the Port of Halifax. Could you throw any light on this, Mr. Minister?

Hon. Mr. SAUVÉ: I am afraid I cannot give you an answer because I cannot find in this document an answer to your question. We will have to go over our own documents and the documents of the Wheat Board and the National Harbours Board, and so on, to give you a precise answer.

SENATOR ISNOR: While your departmental officials are looking up that information I wonder if they would let us know the amount shipped through American ports as compared to the amount shipped through the eastern ports in Canada.

Hon. Mr. SAUVÉ: We are quite willing to give you this information, but it has nothing to do with our own authority. We are not involved with the export business but we can get the information.

The ACTING CHAIRMAN: Would it be satisfactory if that information is obtained by the department later?

Senator ISNOR: That is quite satisfactory, Mr. Chairman, except that I would like to have it put on the record if possible.

The ACTING CHAIRMAN: When we get the information we can have it put on Senate *Hansard*.

Senator ISNOR: That is satisfactory.

Senator KINLEY: I was interested in Senator Pearson's presentation of the number of tractors and other machinery bought in Nova Scotia which I think was to show that they did not progress in farming activities. Well, these figures refer to machinery bought under Government loan. I think there must have been quite a lot of machinery bought without using the Government loan. I know of some at least that was bought without a loan. I do not think it was a good estimate for the purpose of the legislation in question.

The ACTING CHAIRMAN: Senator Benidickson, how about your particular problem?

Senator BENIDICKSON: Mr. Chairman, I did make some comments in the debate in the Senate. I do not know whether the minister has read by remarks—

Hon. Mr. SAUVÉ: I am aware of your position.

Senator BENIDICKSON: I think that my colleague, Senator Hays, is familiar with my past representations along the same line. I refer to the definition of "Eastern Canada" which is in section 2(f) of the bill. We have the Prairie provinces, which are grain-growing areas. Then we start into the pre-Cambrian shield where grain is not grown. Now, we have had for a number of years a grievance in the territory I represented in the House of Commons, Kenora-Rainy River, a grievance that relates to this definition of Eastern Canada. We are located in the Province of Ontario but we feel discriminated against. The very name "Rainy River" perhaps suggests that we can grow hay and clover and some crops that are advantageous to the feeding of cattle, but we are not a grain-growing area.

Mr. Minister, you referred earlier to the Honourable Mr. Hamilton. I have had correspondence with him and with Mr. Hays and with the new minister about this so-called discrimination. I wondered whether you could make a comment on it?

Hon. Mr. SAUVÉ: Yes. I think the bill provides for a correction of this situation. You will notice that section 2(f), on page 2, provides that:

"Eastern Canada" means all that part of Canada lying east of the meridian passing through the eastern boundary of the city of Port Arthur and such other areas in Ontario—

And Rainy River is in Ontario—

—as the Governor in Council may designate;

Therefore, the board will be empowered to pay transportation subsidies.

Senator BENIDICKSON: I see that, but I would like to have had the definition of "Eastern Canada" mean the boundary of Ontario and Manitoba. I discussed with Mr. R. J. Batt, Chief Clerk of Senate Committees, the question of whether or not this would involve an expenditure on the part of the Crown, and thus be

beyond my powers to make a motion either in the Senate or in committee. I do not believe that has been decided upon yet, but I suppose that the fact that the new board, which was uppermost in this legislation—

Senator ASELTINE: If you enlarge the boundaries you spend more money.

Senator BENIDICKSON: That was the point: whether as a legislator I would be permitted to make a motion to extend or alter the boundary. I would make a motion in this committee and in the Senate itself to re-define "Eastern Canada", if I were not contravening any regulation respecting the appropriation of money.

Senator KINLEY: Is it defined in this bill?

Senator BENIDICKSON: Yes, section 2(f).

Senator KINLEY: What is the boundary now?

Senator BENIDICKSON: The line runs north and south at the Lakehead. My proposal would be that the line should be on the Manitoba-Ontario boundary.

Senator KINLEY: That seems to be reasonable. At any rate, I guess they do not think you are far enough away to get a subsidy.

The ACTING CHAIRMAN: It may be a reasonable suggestion but if it enlarged the area in which freight rate subsidies are applicable, I would have to make a ruling with respect to whether we could entertain such a motion. It does seem to increase the amount of subsidies that would be paid.

Senator ISNOR: In other words, it affects appropriations.

The ACTING CHAIRMAN: Yes.

Senator BENIDICKSON: Then, your ruling is that I must continue to make representations to the new board, the same as I have made representations to two or three ministers in the past?

The ACTING CHAIRMAN: You have certainly made them very effectively here.

Hon. Mr. SAUVÉ: I think the board, under the definition of "Eastern Canada", would have the authority to satisfy the honourable senator. You do not need any amendment. The board has the power there.

The ACTING CHAIRMAN: Senator Benidickson is, I think, concerned about his powers of persuasion.

Senator BENIDICKSON: I have failed in the past to persuade ministers, but I thought I might be able to persuade the Senate.

Senator BLOIS: How are the members of the board going to be selected and appointed?

Hon. Mr. SAUVÉ: Section 3 provides that a minimum of three and not more than five members will constitute the board. I shall ask the farm organizations to meet with me and give me their advice as to who they think should be members of this board. They will certainly endeavour to propose to the cabinet the names of farmers who know the problems and are aware of the situation, people they would be confident would effectively represent the eastern provinces on the board.

Senator BLOIS: And British Columbia, I presume?

Hon. Mr. SAUVÉ: There is an advisory committee which will also be organized, and on that advisory committee I would think we would normally have at least one representative from each of the provinces which benefits from this law.

Senator BLOIS: That seems very reasonable.

Senator BENIDICKSON: Did you rule the motion I made to re-define "Eastern Canada" would be out of order?

The ACTING CHAIRMAN: I did not rule, but I did suggest it might be a little awkward for me.

Senator BENEDICKSON: You would likely rule that a motion to re-define the definition of "Eastern Canada" would be contrary to our rights in this committee?

The ACTING CHAIRMAN: It is an offhand opinion and given to you on that basis, but my view would be that if the area is extended the amount of money which would be expended would be increased, and this would be beyond our power.

Senator BENEDICKSON: But we have from the minister a reminder that the new board will have the right to enlarge the designation?

The ACTING CHAIRMAN: That is right. I know the minister has another appointment, so any further questions should be directed to him now, but his office can stay if there are any other questions. Shall we proceed to deal with the bill section by section?

Senator KINLEY: Let us move that it be passed.

The ACTING CHAIRMAN: Senator Kinley moves we report the bill without amendment, seconded by Senator Beaubien (*Provencher*).

Senator ISNOR: I would like to ask one question. This bill first came into effect in 1942, is that right?

Hon. Mr. SAUVÉ: The subsidy came into effect in 1941.

Senator ISNOR: What was the purpose of the subsidy at that time, the foundation for it?

Hon. Mr. SAUVÉ: At the time, you will remember, the allies were in need of more food and the federal Government felt that in eastern Canada we could produce more if we could buy grain at a lesser cost than the cost of buying it in the west plus transportation. It was a policy devised to help the war effort in terms of more food production.

Senator ISNOR: A two-way benefit, for west and east?

Hon. Mr. SAUVÉ: Yes, at that time, and it is still the same now.

Senator ISNOR: That is what I wanted to establish.

Senator HAYS: I am wondering if it might be possible to obtain some figures on the cost of a dozen eggs in Ontario, and so on, the amount of feed that is required, assuming the producer who is producing them is receiving 100 per cent western grains.

Hon. Mr. SAUVÉ: Yes, we could supply this.

Senator HAYS: As far as milk, beef, eggs and that sort of thing are concerned?

Hon. Mr. SAUVÉ: Yes, we could supply this.

Senator BENEDICKSON: To refresh my own memory, would the minister—perhaps he has already done so—remind us as to what the present total cost to the Treasury is of this subsidy? Is it in the nature of almost \$20 million?

Hon. Mr. SAUVÉ: For the year 1966-67, about \$22 million.

The ACTING CHAIRMAN: Are you ready for the question? Shall I report the bill without amendment? All in favour? Contrary, if any? I declare the motion carried.

Thank you very much, Mr. Minister.

Hon. Mr. SAUVÉ: Thank you, honourable senators.

The committee concluded its consideration of the bill.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

No. 30

First Proceedings on Bill S-50,

intituled: "An Act respecting the armed forces of countries
visiting Canada".

THURSDAY, NOVEMBER 17th, 1966

WITNESS:

Brigadier W. J. Lawson, Judge Advocate General.

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OTTAWA, 1966

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-Shelburne</i>)
Cook	Leonard	Thorvaldson
Croll	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Davis	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McDonald	White
Fergusson	McKeen	Willis—(50)
Flynn	McLean	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 16, 1966:

"pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Pouliot, for the second reading of the Bill S-50, intituled: "An Act respecting the armed forces of countries visiting Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, Nov. 17th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 4.40 p.m.

Present: The Honourable Senators Leonard (*Acting Chairman*), Aseltine, Beaubien (*Provencher*), Benidickson, Blois, Connolly (*Ottawa West*), Farris, Gershaw, Haig, Irvine, Isnor, Kinley, and Smith (*Queens-Shelburne*). (13)

Present, but not of the Committee: the Honourable Senator Hays.

In attendance: R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief, Senate Committees Branch.

On Motion of the Honourable Senator Aseltine it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-50.

Bill S-50. "An Act respecting the armed forces of countries visiting Canada", was read and considered.

The following witness was heard:

Brigadier W. J. Lawson, Judge Advocate General.

On Motion duly put it was *Resolved* to defer further consideration of the said Bill until the next meeting of the Committee.

At 4.55 p.m. the Committee adjourned to the call of the Chairman.

ATTEST.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, November 17, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill S-50, respecting the Armed Forces of Countries Visiting Canada, met this day at 4.40 p.m. to give consideration to the bill.

Hon. T. D'ARCY LEONARD (*Acting Chairman*) in the Chair.

The ACTING CHAIRMAN: Honourable senators, we are to deal now with Bill S-50 and I will ask for the usual motion to print the proceedings.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

Our Witness is Brigadier W.J. Lawson, Judge Advocate General, Department of National Defence. I will ask our usual procedure to be followed, and invite Brigadier Lawson to make an explanation of the bill now before us.

Brigadier W. J. Lawson, Judge Advocate General, Department of National Defence: Mr. Chairman and honourable senators, I am accompanied today by Group Captain H. A. McLearn of my office. He and I are prepared to answer questions on the military and legal aspects of this legislation. Also present are Mr. Riddell and Mr. Lapointe of the Department of External Affairs, who are prepared to answer questions any member may ask on the international aspects.

I feel that there is little I can usefully add to the very full and lucid explanation of the bill given to the Senate on second reading by the honourable Senator Langlois.

As he explained at that time, the purpose of the bill is to consolidate in one statute all the legislation regarding the armed forces of other countries visiting Canada.

It may be asked: Why is a Visiting Forces Act necessary? It is necessary because if there were no Visiting Forces Act a foreign force upon entering Canada would automatically lose its power to administer its internal discipline. Its members would become nothing more than tourists, subject to Canadian civil and criminal law, it is true, but not to the military law of the forces to which they belonged, nor Canadian military law.

Again, on examining the bill you may think the privileges and immunities granted visiting forces are quite extensive, perhaps more extensive than you think need be. However, I would point out that Canadian forces serving abroad—and there are many more Canadian forces serving abroad than there are foreign forces serving in Canada—are granted the same privileges and immunities in these other countries as we grant foreign forces visiting Canada

under this bill. Were we in Canada to curtail these privileges and immunities of the other countries, they without doubt would curtail the privileges and immunities granted our troops serving within their borders.

SENATOR KINLEY: What are the provisions concerning a foreign force bearing arms coming into Canada, if they have their side arms and rifles are they allowed in?

BRIGADIER LAWSON: There is provision in the bill permitting foreign forces to bring their arms with them and carry their arms in Canada when appropriate.

SENATOR KINLEY: They have to have permission?

BRIGADIER LAWSON: A force could not come into Canada without permission of the Government. Of course, this is basic.

SENATOR KINLEY: I know I had that trouble once in the United States, that they were very particular about not bringing their arms with them. Then we had the Norwegians training their forces in our part of Nova Scotia. They had to go and see the chief of staff and they were accorded all privileges and they had their arms with them. I know years ago they were very particular about that in the United States, you could not bring your arms; you had to go unarmed.

THE ACTING CHAIRMAN: Thank you, Senator Kinley.

BRIGADIER LAWSON: A brief outline of the history of visiting forces legislation in Canada might be of some interest to members of the committee.

Prior to the Statute of Westminster there was no need for visiting forces legislation in Canada. Canadian forces normally went abroad only to engage in warlike operations or in peacetime for training or manoeuvres in the United Kingdom or other parts of the Empire.

The only non-Canadian forces that normally visit Canada were from the United Kingdom and the Empire. These forces, like the Canadian forces, were governed by the Naval Discipline Act, the Army Act and the Air Force Act of the United Kingdom and so, in a legal sense, were one force. They were not really visiting forces. They were all one Empire force. This was, of course, changed by the Statute of Westminster. To provide for the legal position of Canadian forces visiting other parts of the Empire, and other Empire forces visiting Canada, it was necessary to enact reciprocal legislation in the United Kingdom and in the self-governing dominions. The necessary Canadian legislation was embodied in the Visiting Forces (British Commonwealth) Act. Throughout World War II our co-operation with other British forces was based on the provisions of this act.

Following the entry of the United States into World War II it became apparent that some provision was required to deal with the legal position of American forces in Canada. This was done in the first instance by an Order in Council under the War Measures Act, but at the end of the war it was obvious that some permanent provision for the position of American forces in Canada would be required, and the Visiting Forces (United States of America) Act was enacted in 1947.

In 1949 Canada became a member of NATO. One of the agreements entered into at that time by Canada was the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces. This agreement provided for the status of the armed forces of one NATO country when in another NATO country. Legislation was required to approve and implement this Agreement. This legislation was submitted to Parliament and passed in 1951, and was known as the Visiting Forces (North Atlantic Treaty) Act.

At the time this last-mentioned act was drafted it was foreseen that the armed forces of non-NATO states might visit Canada from time to time, and that provision should be made for the status of such forces in Canada. This was done

by providing in the Visiting Forces (North Atlantic Treaty) Act that the forces of other countries could be brought under the Act by the Governor in Council designating them as associated states under section 5.

Since the act was passed, armed forces of many non-NATO countries, particularly the emerging African states, have visited Canada for training and other purposes. It is felt that it is not appropriate that the forces of these non-NATO countries should have their status in Canada determined by an act of parliament designed to implement the North Atlantic Treaty, and to apply to members of the North Atlantic Treaty Organization. The government, therefore, decided that it would submit to Parliament for approval a bill repealing the existing Visiting Forces acts, and providing for all visiting forces in a uniform way. I may say that this is the course that has been followed by the United Kingdom and other NATO countries requiring such legislation.

The new act embodies most of the provisions of the Visiting Forces (NATO) Act. There are certain important amendments, however, that I think can best be explained when the various sections of the bill are being examined by your committee.

The ACTING CHAIRMAN: Thank you, Brigadier Lawson.

Senator ISNOR: Perhaps, in order to save time, Brigadier Lawson would be good enough to mention those particular sections now.

The ACTING CHAIRMAN: I was just going to say to the committee that Senator Connolly informs me that the supply bill has passed the other place, and that the bell will soon be ringing to call us back to the chamber. As there is no hurry about reporting this particular bill, can we let it stand for further consideration until the next meeting of the committee? Is that agreeable?

Senator BENIDICKSON: Mr. Chairman, I still think Senator Isnor's suggestion is a good one. Perhaps the brigadier could highlight any changes of consequence so that we would have them on the record today.

The ACTING CHAIRMAN: Thank you. I take it that we shall have time for that.

Senator KINLEY: Does it deal with air forces, in any way?

Brigadier LAWSON: It deals with all services, not specifically the air forces.

Senator BENIDICKSON: If it is a long statement, I will withdraw my suggestion.

Brigadier LAWSON: It will take some time, Mr. Chairman.

Senator BENIDICKSON: Then I withdraw my suggestion.

The ACTING CHAIRMAN: Thank you. Is it agreed that the committee do now adjourn and report progress on this particular bill?

Hon. SENATORS: Agreed.

Senator BENIDICKSON: We should thank Brigadier Lawson very much at this time for making this statement.

The ACTING CHAIRMAN: Yes. I extend to you, Brigadier Lawson, the thanks of the committee.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

No. 31

Complete Proceedings on Bill S-54,

intituled:

"An Act to amend the Canada Labour (Standards) Code"

TUESDAY, NOVEMBER 22nd, 1966

WITNESSES:

Department of Labour: The Honourable John R. Nicholson, Minister;
H. S. Johnstone, Director, Labour Standards Branch.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
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Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Leonard	Thorvaldson
Croll	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Davis	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McDonald	White
Fergusson	McKeen	Willis—(50)
Flynn	McLean	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 22, 1966:

"The Honourable Senator Connolly, P.C., presented the Senate a Bill S-54, intituled: 'An Act to amend the Canada Labour (Standards) Code'.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Hugessen, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, November 22, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 8.00 p.m.

Present: The Honourable Senators Leonard (*Acting Chairman*), Aseltine, Baird, Beaubien (*Provencher*), Blois, Choquette, Connolly (*Ottawa West*), Cook, Croll, Gershaw, Gouin, Isnor, Kinley, Macdonald (*Cape Breton*), Macdonald (*Brantford*), O'Leary (*Carleton*), Paterson, Pearson and Reid.(19).

In attendance: R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief, Senate Committees Branch.

On motion of the Honourable Senator Beaubien (*Provencher*) it was *Resolved* to report recommending that authority be granted for printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-54.

Bill S-54, "An Act to amend the Canada Labour (Standards) Code", was read and considered.

The following witnesses were heard:

DEPARTMENT OF LABOUR:

The Honourable John R. Nicholson, Minister.

H. S. Johnstone, Director, Labour Standards Branch.

On Motion of the Honourable Senator Choquette it was *Resolved* to report the said Bill without amendment.

At 8.50 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, November 22, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-54, intituled: "An Act to amend the Canada Labour (Standards) Code", has in obedience to the order of reference of November 22, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE EVIDENCE

OTTAWA, Tuesday, November 22, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill S-54, to amend the Canada Labour (Standards) Code, met this day at 8 p.m. to give consideration to the bill.

Senator T. D'Arcy Leonard (*Acting Chairman*) in the Chair.

The ACTING CHAIRMAN: Honourable senators, there has been referred to the committee Bill S-54 intituled an act to amend the Canada Labour (Standards) Code. Shall we have the usual motion with respect to printing?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

Honourable senators, we are pleased to have with us the Honourable John R. Nicholson, Minister of Labour, whom we are happy to welcome. I believe he will introduce those officials that he has with him. In the usual course of our proceedings shall we ask the minister if he will proceed with an explanation of the bill? Is that agreeable?

Some Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Mr. Nicholson, would you be good enough to carry on?

The Honourable John Robert Nicholson, Minister, Department of Labour: Mr. Chairman, honourable senators, I have with me Mr. Jean Després, my Assistant Deputy Minister, Mr. Harris Johnstone, Director of Labour Standards, and Miss E. Lorentsen of the Legislation Branch of the Department of Labour.

You will recall, I am sure, that about 16 or 18 months ago the Parliament of Canada passed the new Labour Standards Code, which provides *inter alia* for certain general holidays with pay in every year. There are eight such holidays provided for in the act. But an employee is not entitled to a general holiday with pay unless he has fulfilled two conditions: he must have completed 30 days of service with an employer and he must have worked for 15 of the 30 days that precede the holiday.

Senator REID: That is the law, is it?

Hon. Mr. NICHOLSON: That is the law today. Now, if he works for one employer, there is no problem. But we have run into a unique situation regarding the longshore industry, because in the activities of the longshoremen on both coasts, longshoremen frequently work for three, four or possibly five different employers in the course of one week.

Senator REID: Is that common?

Hon. Mr. NICHOLSON: It is quite common. It is the custom of the trade and applies on both coasts. It applies over a work period of 12 months on the west

coast and one of eight and a half months on the east coast, although it is longer in Halifax and Saint John where they have a 12-month period also. You get called out to work. You work in gangs working four-hour shifts. You may work for three or four days a week for one stevedoring company, and then work part of two other days or a full day for a second, third or fourth stevedoring company.

Senator REID: Are they paid by them individually?

Hon. Mr. NICHOLSON: Yes, they are paid by them individually.

Senator PEARSON: How do they get in touch with the stevedores to employ them?

Hon. Mr. NICHOLSON: They have a call office on the docks maintained by the stevedoring companies or Shipping Federation in Montreal, Trois Rivières and Quebec, or by their counterpart, the B.C. Maritime Employers' Association, on the west coast. They call and say they want so many men at 7 o'clock or the appropriate hour the next morning, and for the afternoon shift they call in advance and say "We want so many men in the afternoon." The day is divided into three shifts of four hours each. A man might work 10 or 12 hours one day for three different employers.

When the Canada Labour (Standards) Code was passed last year nobody had anticipated this novel situation, where you have as one of the regular customs of an industry a man working for three different employers in that industry. This is one of those legislative accidents that occur occasionally.

In the spring of this year the longshoremen on the west coast were called up for service for the holiday in the week in which the 24th May occurs. Some of them were fortunate enough to have worked for one employer, and they would get paid for the day they did not work; or if they were called up to work, those who worked for the one employer would get the double time provided for in the collective agreement. If it was not provided for in the agreement, they would have got time-and-a-half if they were called up to work.

Those who were called up for work said, "Are we going to get paid—because we have not worked long enough for one employer?" The result was that there was a work stoppage, and there was an injunction taken out for the holiday to compel the men to work. Actually, there was contempt of court. The injunction was an *ex parte* injunction, unfortunately, but as a result of this *ex parte* injunction several union leaders were summoned before a judge of the Supreme Court, and he ordered them to pay a substantial fine or, in the alternative, go to jail. To highlight the fact there was a defect in the act, they all elected to go to jail, and they would have stayed in jail, one for four months and the other nine. I believe it was, for three months, except for a combination of circumstances.

When this peculiar circumstance was drawn to my attention, I agreed that regardless of this situation this legislation should be corrected. After consulting with my colleagues in the Government, I gave a solemn undertaking that before the end of the year I would introduce into Parliament, with the Government's full support, legislation to correct this defect; and that is what this bill is all about. That is the principal matter dealt with in the bill.

Senator ISNOR: Mr. Minister, I wonder if you would enlarge on the employment angle in so far as the employee is concerned. Must he have continuous employment with the one employer?

Hon. Mr. NICHOLSON: Under the act as it now stands, yes.

Perhaps I should say that before this amending bill was introduced I discussed it with representatives of the employers on both coasts. I outlined the problem in my discussions with them and spoke about the most equitable way to

pay these people for the holiday if they did not work—how it would be apportioned. It can be done equitably under the proper formula. We could not in this bill, which is a very short one, anticipate every case. We thought it would be much simpler if you, in your wisdom, and the other house would designate this particular industry or industries of this kind as a multi-employer employment. The only industry we have been able to find where this anomaly exists is the longshore industry. There is no other industry in Canada, we believe, that follows this course.

After full discussion with the representatives of the Shipping Federation of Canada and with the counterpart of the shipping federation on the west coast, the B.C. Maritime Employers' Association, they understand what we are trying to do and the equity of what we are trying to do, and they are in general agreement with the action we propose.

Senator BAIRD: Does this come up in any other form in any other place but British Columbia?

Hon. Mr. NICHOLSON: Yes, the same thing would arise in Halifax, Saint John, New Brunswick, Montreal and Hamilton, and possibly St. John's, Newfoundland.

Senator REID: How does it work out now?

Hon. Mr. NICHOLSON: They do not get paid what was intended, and so they are saying: "We do not want to work".

Senator CHOQUETTE: Mr. Minister, how is the apportionment made, and by whom? Is there a body of men or an association?

Hon. Mr. NICHOLSON: We suggest in this bill, senator, that the Governor in Council be authorized to make regulations defining more particularly the expression "multi-employer employment", and dealing with these other matters. To the best of our knowledge—and Mr. Johnstone who has been in this field for several decades agrees—this is the only industry in which this occurs, but it is conceivable that there might be another industry and, therefore, rather than come back and ask to amend the act every time such a situation arises, and to prevent further inequities, we are asking you to delegate to the Governor in Council the right to do this by regulation.

Suppose that a man during the 30 days preceding his holiday has worked—I will put it in days, rather than hours—ten days for one company, ten days for another company, and ten days for a third company. It is not likely that he would have worked a full 30 days in one month, but suppose he worked an equal amount of time for each one of those three employers. Each one would then pay one third of his holiday pay. However, when it comes to paying for the time he has worked then they will probably be paying different amounts. If he worked on a holiday or overtime for one company then that company would pay him one and a half times the usual hourly rate, or whatever the collective agreement in force calls for.

Senator REID: Is the length of the day defined?

Hon. Mr. NICHOLSON: Yes, it is an eight hour day, and a 40 hour week. That is defined in the existing legislation.

Senator CONNOLLY (*Ottawa West*): Perhaps I should say to the Minister that one of the problems that arose in the Senate this afternoon was that raised by Senator Choquette, and in answering it I went a little further. I used an illustration in which there were five companies, with each one absorbing 20 per cent.

The ACTING CHAIRMAN: That is, providing the man was employed by each of the five companies for the same length of time.

Hon. Mr. NICHOLSON: That is right.

Senator CONNOLLY (*Ottawa West*): A further question that was asked was: How is the apportionment to be made, and by whom? My answer, which I gathered from discussions with your officials, was that there would be a record kept, and under the regulations all employers would report—

Senator PEARSON: Who would keep the record?

Senator CONNOLLY (*Ottawa West*): The employer would report, and the record would be kept under the regulations presumably by an official of the Department. The apportionment would be made as a result of the submission of those records. I would assume that the employee, knowing for whom he has worked and for how long, would have a check upon the record that was submitted for the apportionment, and if there was any injustice done to him he would have his recourse under the regulations.

Hon. Mr. NICHOLSON: Yes. The employers would be able to adjust it between themselves on a percentage basis.

Senator CROLL: The employee has deductions made for pension purposes. The records are there. Who keeps the records? The government keeps the records. They can always go to them. The employers also must keep records because they make deductions. So, everybody knows for whom he has worked, and for how long he has worked.

Hon. Mr. NICHOLSON: Supplementing what Senator Croll has said, we do not anticipate any difficulty in that respect because by simply taking the 3 per cent figure it could be worked out.

Senator CROLL: When you have not anything to do, Mr. Minister, try working out the problem a multi-employer faces who pays certain sums of money into the government, and the finds at the end of the year he cannot get any of it back.

The ACTING CHAIRMAN: That is another problem.

Hon. Mr. NICHOLSON: That does not arise in this case.

Senator CHOQUETTE: Mr. Minister, our main complaint was in respect of those interested in this bill not being given a chance of being heard. Do you propose, when the bill goes to the other place, giving those people who may wish to make representations an opportunity of doing so?

Hon. Mr. NICHOLSON: I cannot anticipate anybody wanting to be heard further in respect of this bill, because the unions are pressing for it, and the employers' organizations on the two coasts have already made representations. The unions are pressing for this amendment on both coasts and the two employers' organizations on the two coasts have already made extensive representations and they have actually suggested a formula that might be incorporated in the proposed regulations.

Senator CROLL: Nobody is going to be asked to give up anything, so there should be no complaint on anybody's part.

Hon. Mr. NICHOLSON: In fact, it would be most unfair to an employer, because if one employer happens to engage a longshoreman for 15 days he pays the whole shot, and the other employers who employ him the other 15 days pay nothing. It is certainly equitable to put this legislation through as soon as possible.

Senator BLOIS: What is the three per cent deduction?

Hon. Mr. NICHOLSON: I might ask Mr. Harris Johnstone our Director. This percentage is not in the bill itself. It would be covered by regulation.

Senator BLOIS: No, I realise that.

Hon. Mr. NICHOLSON: This is the formula that we are thinking of incorporating in the regulations of this legislation.

Senator BLOIS: Is that three per cent of the various firms on the coast of which maybe 50 are concerned?

Hon. Mr. NICHOLSON: No, a maximum of about six firms, I think.

Senator BLOIS: I understood this afternoon that it was about 50.

Harris S. Johnstone, Director, Labour Standards Branch, Department of Labour: Mr. Chairman, I would like to direct to your attention subsection (2) of 34D of the proposed amendment, which appears on page 2, and deals with the kind of regulations to be made to carry out these objectives.

The CHAIRMAN: Let me read it while you follow it. It is at the bottom of the page:

Regulations made under subsection (1) shall be designed to ensure that the amounts of money paid in accordance therewith to an employee in respect of general holidays or annual vacations, shall, so far as practicable, equal the amounts that the employee would have been entitled to receive in respect thereof had he been employed for a like period by one employer instead of being engaged in a multi-employer employment.

Mr. JOHNSTONE: I would like to comment first on the annual vacations. It is our thought that all we need to do, in order to see that he is paid proportionately for annual vacations, is to add 4 per cent to what he earns.

Senator BLOIS: That is in addition to the 3 per cent the minister mentioned?

Mr. JOHNSTONE: The annual vacation now is 4 per cent of what he earns in the years of employment, and he has 2 weeks of idleness, and 4 per cent of his earnings is vacation pay. When it comes to general holidays, there are 8 in the year, and the 2 weeks of annual vacation usually encompass 10 to 14 days. Therefore, if he gets 4 per cent for 10 working days on his annual vacation we estimate he would be equally remunerated if he received 3 per cent of what he earns in compensation for his general holidays.

Senator BLOIS: That is for the 8 holidays?

Mr. JOHNSTONE: So our present thinking is that if we enact a regulation to add 3 per cent to what he earns that is his general holiday pay.

Senator BLOIS: To be clear, that money is going to be paid to some government official, is it?

Mr. JOHNSTONE: No.

Senator BLOIS: Supposing there are only 6, will he add it to every payday?

Mr. JOHNSTONE: That is his holiday pay. That is in substitution for the 8 days' pay for 8 regular holidays.

Senator BLOIS: Plus 10 days' holiday pay?

Mr. JOHNSTONE: It is equating the 4 per cent to vacation. He gets 3 per cent for eight holidays.

Senator BLOIS: So really he is getting pay rather than actual holiday?

Mr. JOHNSTONE: Oh, yes. If he works on the holidays in addition to the 3 per cent he must receive time and a half, at least.

Hon. Mr. NICHOLSON: That would be the responsibility of the individual employer.

Senator PEARSON: Would a man working, say, in Vancouver be entitled to go to Victoria, Westminster, or Prince Rupert, or anywhere else, and receive the same consideration?

Hon. Mr. NICHOLSON: Yes, if he is in the industry—perhaps not if he is too far away. But he might work 10 days in Prince Rupert, and some in another B.C. port. This would all be covered. There is only one employer's association on the west coast, one on the east coast, the one on the east coast covering Montreal, Trois Rivières, Halifax, Saint John, Toronto, Hamilton and other eastern ports. I am not sure about St. John's, Newfoundland.

Senator HOLLETT: I understand that you said that the employers had been consulted on this matter.

Hon. Mr. NICHOLSON: On both coasts, yes.

Senator HOLLETT: And St. John's, Newfoundland?

Hon. Mr. NICHOLSON: We have not discussed it with anybody from Newfoundland that I know of but we have discussed it with representatives of the shipping federation in eastern Canada and also with representatives of the Maritime Employers' Association which operates in the Great Lakes and the St. Lawrence Seaway.

Senator HOLLETT: But not Newfoundland?

Hon. Mr. NICHOLSON: I cannot say that we have discussed it with anybody from Newfoundland.

Senator HOLLETT: I must say I took exception to this simply because the employers have not been consulted.

Hon. Mr. NICHOLSON: I cannot say we discussed it with any specific employer in Newfoundland. We discussed it with three associations—two on the east coast and one on the west coast.

Senator KINLEY: The east coast association, did that include Newfoundland?

The CHAIRMAN: Does Mr. Johnstone know the situation with respect to Newfoundland, whether it is a multi-employer situation or a single-employer situation? Or does Senator Hollett know?

Mr. JOHNSTONE: I think it is mixed. I think there are some multi-employer and some single employer.

Hon. Mr. NICHOLSON: We have never had any complaint.

Senator HOLLETT: But they do not know anything about it.

Hon. Mr. NICHOLSON: They should know about the act, I suggest.

Senator HOLLETT: What happens in a case such as we had in St. John's, Newfoundland, where quite a large percentage of the longshoremen did not get even 6 months' work during 12 months? What happens there?

Mr. JOHNSTONE: If they happen to be working during 30 days preceding a holiday, this act applies; if they work for 15 of the 30 days—

Hon. Mr. NICHOLSON: May I point out that in the St. Lawrence ports they work only 8½ months a year. The same principle applies.

Senator KINLEY: This legislation, of course, covers federal employment only, those responsible to the federal Government in employment?

Hon. Mr. NICHOLSON: It only applies to employees who come within the federal jurisdiction.

Senator KINLEY: Does it cover those men who are stevedores in British Columbia now?

Hon. Mr. NICHOLSON: Oh yes.

Senator KINLEY: I understood that shipping was not coming under this code, that it was held out?

Hon. Mr. NICHOLSON: It definitely comes under the code.

Senator KINLEY: When was it put in?

Hon. Mr. NICHOLSON: When the code was originally passed last year.

Senator KINLEY: Oh, no.

Hon. Mr. NICHOLSON: The code is right here. I have it and will gladly read it.

Senator KINLEY: We have had it here. Shipping was held out. We brought it out here that the British shipping was not under their code, and it was not in. I think there is some provision for shipping. However, I am not going to question this. I want to bring that out.

Hon. Mr. NICHOLSON: I think, senator, you may be confusing this with another part of the act—the deferment section of the act—Part I. You are referring to Part I of the act, I think.

Senator KINLEY: The minister had discretion to hold out certain industries and I thought shipping was one of them.

Hon. Mr. NICHOLSON: The minister has some discretion. For instance, after December 31 of this year, I would still have—

Senator KINLEY: You would put them all in?

Hon. Mr. NICHOLSON: I would have to insist that everybody get the minimum of \$1.25 an hour, however.

Senator KINLEY: That is the minimum wage?

Hon. Mr. NICHOLSON: That is part of the act.

Senator KINLEY: That is really so low that it never affects anybody very much, anyway. There is a provision that if a man does not work the day before a holiday, he does not get the holiday with pay; and if he stays away the day after the holiday the same applies. He must be working the day before and the day after.

Hon. Mr. NICHOLSON: It does not apply under this act at all; it is not in the standards code.

Senator KINLEY: Is the 30-day period invaded by this arrangement?

Hon. Mr. NICHOLSON: No.

Senator KINLEY: It is not?

Hon. Mr. NICHOLSON: Not by the arrangement that you have discussed, because that arrangement is not provided for in this act.

Senator KINLEY: We are talking about multi-employer employment. If a man leaves one employer and goes to another, he gets it; but in most industries there is a 30-day period before he qualifies.

Hon. Mr. NICHOLSON: It still applies.

Senator KINLEY: Is that in the act?

Hon. Mr. NICHOLSON: Yes, but he could work the 30 days in order to qualify him, he could work for three or 4 or 5 different employers during that period.

Senator KINLEY: This does not say stevedores. It may affect any industry in Canada?

Hon. Mr. NICHOLSON: If you look at the explanatory notes of the interpretation section, which is 34A of section 1 of this Act, you will see it reads as follows:

- (b) "multi-employer employment", as more particularly defined by the regulations, refers to employment in an occupation or trade in which, by the custom of that occupation or trade, any or all employees would in the usual course of a working month be ordinarily employed by more than one employer.

Senator KINLEY: That happens in many employments.

Hon. Mr. NICHOLSON: We are not trying to give a fellow that is moonlighting these benefits. It must be his regular avocation.

Senator KINLEY: The more skill they have the more they moonlight. I have not heard this question raised in connection with the Atlantic Coast. I understand that in Halifax there were three or four stevedore bosses who worked and their crews with them stuck to the one employer.

Hon. Mr. NICHOLSON: I would think a very large proportion work for one employer, but many others don't. There is a very large proportion of longshoremen who work for several employers. We want to correct the inequities that now exist.

Senator KINLEY: I don't think it will hurt anybody much if it can be arranged that one person does not take too much advantage of it. If a man works all week and there is a holiday with pay, who pays for that? If he works a week and works on Labour Day?

Hon. Mr. NICHOLSON: If he works on Labour Day the man that hires him will give him the pay he is entitled to.

Senator KINLEY: If he works then the next week when there is no Labour Day what happens then?

Hon. Mr. NICHOLSON: What we are trying to do is to take care that he gets his two weeks vacation and eight statutory holidays.

Senator KINLEY: Well, as things are now, he gets two weeks vacation usually and he gets a percentage if he leaves in the interim—he gets a percentage for the time he works. He gets a percentage on his payroll if he does not work the full year to cover his two weeks vacation?

Hon. Mr. NICHOLSON: Yes.

The ACTING CHAIRMAN: Honourable senators, you can hear the bells ringing for a division in the House of Commons. Mr. Nicholson has to leave in order to do his duty by the House of Commons. His officials are here to deal with further questions. Is that in order?

Hon. Mr. NICHOLSON: I'll gladly come back later if necessary.

Senator CHOQUETTE: It is not complicated and you have made it very plain.

Hon. Mr. NICHOLSON: Thank you, honourable senators. I am sorry to have to leave like this.

Senator PATERSON: Before Mr. Nicholson leaves, is the settlement of the strike on the Coast predicated on our passing this code?

Hon. Mr. NICHOLSON: No, senator, I must say in all frankness that such is not the case, but we would like to see this legislation passed.

Senator PATERSON: Well then we have lots of time to discuss it.

Hon. Mr. NICHOLSON: I would like to say this. As you know an assurance was given to these people last July. Some men are now back to work on the Coast as

a result of a Court injunction. They are not back 100 per cent, and there are not the supervisory crews there that we might like to have, and so I would think that early passing of this legislation will improve the situation materially on the West Coast. That is one of the arguments I advanced to Senator Connolly this afternoon when I expressed a hope that this measure would get early passage. The grain is moving on the west coast, but lumber and other products are not moving as quickly as we would like to see them move.

Senator PATERSON: I have in mind a certain settlement made in the East sometime back, and it is going to take us a long time to live it down because it is quoted now in very situation where settlement is sought. I would not want to see any more mistakes like that one being made. We should be very slow and very careful and give a lot of thought to what we are doing.

Hon. Mr. NICHOLSON: I do not think anybody could suggest there is anything inflationary in this bill. It is correcting an omission, if I may put it that way, that was overlooked in this legislation when it was passed last year. There is nothing inflationary about it. The great majority of these people, if employed by one employer, get their money, but other people avoid paying what we in fairness think should be paid. There is nothing inflationary in it.

Senator CHOQUETTE: Had we known about it when we passed the Act originally we would have done this very thing.

Hon. Mr. NICHOLSON: In my opinion, this should have been in the original bill. There is no question about that.

Senator HOLLETT: I understood you to say that all the employers on the west coast have been consulted on this matter.

Hon. Mr. NICHOLSON: The employers have, yes. The employers on the Great Lakes and in the Maritime provinces have also been consulted on this proposal and they are agreeable to such a bill. At least, they have raised no objection to it. In fact, the employers have made constructive suggestions as to what we might incorporate in the regulations.

May I be excused?

Senator BLOIS: Mr. Chairman, I am not clear in my mind on one point and I would like to ask Mr. Johnstone a question. I understood the minister to say that an employee working for one company on, for example, Labour Day, would be paid by that company for that holiday. That company would pay him holiday pay, but I understood you to say that 3 per cent would be deducted by the company into a general fund to pay that. Am I correct? Or have I misunderstood it altogether?

Mr. JOHNSTONE: I think on the west coast under collective agreements, if a man works on a designated holiday he gets extra time, double time.

Senator BLOIS: Yes, I realize that.

Mr. JOHNSTONE: I think the obligation of the employer ends there by the agreement. Now, under the Labour Code, if a man is entitled to general holiday benefits and works on a general holiday, he receives a regular day's pay for the holiday and he receives not less than time and one half for the time worked. That is the code based upon his employment record with a single employer. But, on the west coast, as the minister has explained, these men work for different employers. I have seen their payrolls, and I have seen where one man works for 3 employers in one day.

Senator BLOIS: In one day?

Mr. JOHNSTONE: Yes. He might work for 7 employers in one week. So they do not build up the ordinarily entitled holiday pay. Therefore, some longshoremen are regularly employed and get the holiday pay benefits, but there are other

longshoremen who are equally busy in the industry but who do not receive the holiday entitlements. The bill is designed, therefore, to first of all define multi-employer employment and then to apply a different method of remunerating them for holiday pay. As I explained before, we think that the equivalent of that is 3 per cent. If 4 per cent is proper vacation pay for two weeks, or 10 working days, then 3 per cent is proper vacation pay for eight holidays.

Senator BLOIS: To make it clear, he will get time and a half or double time, making Labour Day is an example, plus 3 per cent of his total pay. Is that correct?

Mr. JOHNSTONE: Yes.

The ACTING CHAIRMAN: Put it another way. Let us assume that he does not work on holidays. Nevertheless, each day he works 3 per cent is added to the pay he gets and that is paid by his employer of the day. This is how, over the whole period of time, he gets his 3 per cent.

Senator BLOIS: Excuse me, but that generally would not be for one man?

Mr. JOHNSTONE: It is 3 per cent of his earnings, and it is paid by whomever he earns it from.

Senator BLOIS: If he worked for seven people in one week, each one of the seven would pay him 3 per cent so that he would get his wages plus 3 per cent in addition to what he gets for the holiday itself, which would be either time and a half or double time.

The ACTING CHAIRMAN: That is correct. The 3 per cent is paid by his employer of the day.

Senator BLOIS: Yes. Thank you.

The ACTING CHAIRMAN: On his hourly wage each day 3 per cent is added for his employer for that hour or for that day. As it works out, it is a vacation holiday pay bonus. Now, is that all clear?

Senator BLOIS: It is to me.

The ACTING CHAIRMAN: Are there any further questions on this?

Senator ISNOR: Yes. Mr. Johnstone, you said that the employees of the east coast approved of the general principle of the bill. Who do you mean by the employees there? There are several organizations there, as I recall. There is the Eastern Canada Stevedoring Company, there is Brown and Ryan Ltd., Scotia Stevedoring Co. Ltd., Pickford & Black Ltd., Furness Withy Co. Ltd., and a couple of others in addition to the Halifax Longshoremen's Union.

Mr. JOHNSTONE: Well, you are referring to employers there.

Senator ISNOR: No. They are so-called employees, I would judge, because they are working for the steamship companies when they are assigned work.

The ACTING CHAIRMAN: But they are the employers of the longshoremen whom we are discussing, are they not?

Senator ISNOR: That is what I want to clear up. The steamship people pay for the services of these companies I have mentioned, and, therefore, are their employers. So, they must be the employees of the steamship companies.

Mr. JOHNSTONE: Let me, first, Senator Isnor, describe my understanding of the situation in Montreal, Quebec and Trois Rivières. There you have the Shipping—

Senator ISNOR: I am interested in Halifax.

Mr. JOHNSTONE: Yes, I will come to Halifax. There you have the Shipping Federation of Canada, which is an association of shipping companies, and they

employ longshoremen in their operations, and you also have a series of stevedoring companies who also employ longshoremen. Both groups employ longshoremen.

I am not too clear about the situation on the east coast in Halifax. We know there is considerable longshore work done, but we have received very few representations from either the employers or the employees on the east coast.

Senator ISNOR: I am glad you made that statement. Before—

Senator CONNOLLY (*Ottawa West*): Might I just say—are you through, Senator Isnor?

Senator ISNOR: No, just let me finish. Earlier, the minister said that he had heard from the east coast, and I just want to make sure as to whether you did hear from them, because when I go back I know Jack Campbell and some of the others will say to me, "You're a fine fellow!"

Mr. JOHNSTONE: We have had some inquiries from the east coast about how the code operates. Many revolved around how the general section would operate. We have not had as many discussions with the east coast people as we have had with the Shipping Federation in Montreal, Quebec and Trois Rivières, and with the British Columbia Maritime Employers' Association, the two groups which are the strongly organized ones.

Senator O'LEARY (*Carleton*): What is a stevedoring company?

Mr. JOHNSTONE: They employ people to load and unload ships.

Senator O'LEARY (*Carleton*): How many are in Vancouver?

Mr. JOHNSTONE: I cannot say off hand.

The ACTING CHAIRMAN: Before you came in, I think the honourable Mr. Nicholson said there were about six employers of longshoremen.

Senator CONNOLLY (*Ottawa West*): Stevedoring companies.

The ACTING CHAIRMAN: Six stevedoring companies on the west coast.

Senator CONNOLLY (*Ottawa West*): Perhaps I could say this. I do not say this out of any information I have here, but I remember in my own practice at one time doing some work for an organization in Montreal which was a stevedoring company. They were people who employed the longshoremen, and they contracted with various shipping companies, steamship companies, and so on, and supplied the men. I would gather that in these cases these men working for that stevedoring company would be in continuous employment because they were working for the same employer all the time. But we are more concerned about this other fellow who does not work for a stevedoring company and hires his services directly to the shipping company. As Miss Lorentsen has pointed out to me, on the west coast you can have as many as 70 different shipping companies employing longshoremen directly who do their work not through the medium of a stevedoring company. While you may have stevedoring companies working out there, you also have this other situation where shipping companies employ the longshoremen directly.

Senator O'LEARY (*Carleton*): I worked in Saint John, New Brunswick, for years, and I knew a lot of longshoremen. This was 56 years ago. In fact, I played poker in the longshoremen's hall, and I never heard of a stevedoring company. That is why I am curious about this. These people were hired by the various shipping agencies. I do not know who these people are and what they consist of, what are their responsibilities, and whether they are responsible people.

Mr. JOHNSTONE: As Senator Connolly (*Ottawa West*) has explained, in Montreal, Quebec and Trois Rivières there are quite a few stevedoring companies who take contracts from shipping companies to do the loading and unloading. The shipping companies themselves have longshoremen, principally continuing longshoremen and sometimes longshoremen foremen. On the west coast most are employed by the shipping companies and less by stevedoring companies.

Senator CHOQUETTE: Are the stevedoring companies charging people to find work for them?

Mr. JOHNSTONE: Stevedoring companies in the east take contracts from shipping companies to load and unload.

Senator PEARSON: Does the man who works for a stevedoring company get the same pay as if he worked direct for the shipping company?

Mr. JOHNSTONE: They are mostly tied up under the same agreement.

Senator MACDONALD (*Brantford*): I am a landlubber. Would you kindly explain to me the difference between a stevedore and a longshoreman.

Mr. JOHNSTONE: Well, generally, the men who do the work are called longshoremen, but sometimes they are also called stevedores. The terms are intermingled. You might say that mostly the companies which employ the men, and which are not ship owners, are called stevedoring companies.

The ACTING CHAIRMAN: Do you agree with that, Senator Kinley?

Senator KINLEY: The two terms are almost synonymous.

The ACTING CHAIRMAN: Are there any other questions? Does the committee wish to consider the bill clause by clause, or is there a motion to report the bill without amendment?

Senator CHOQUETTE: I will move that the bill be reported without amendment.

The ACTING CHAIRMAN: It is moved by Senator Choquette, and seconded by Senator Connolly (*Ottawa West*), that we report the bill without amendment. What is your pleasure.

Some hon. SENATORS: Carried.

The Acting CHAIRMAN: On behalf of the committee I thank the minister, Mr. Johnston, Miss Lorentsen and Mr. Després for their attendance here this evening.

The meeting adjourned.



First Session—Twenty-seventh Parliament

1966

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 32

Second and Final Proceedings on Bill S-50,
intituled: "An Act respecting the armed forces of countries
visiting Canada."

WEDNESDAY, NOVEMBER 30th, 1966

WITNESSES:

Department of National Defence: Brigadier W. J. Lawson, Judge Advocate General; G/C H. A. McLearn (Air Force), Deputy Judge Advocate General.

Department of External Affairs: G. G. Riddell, Defence Liaison Division.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i>
Cook	Leonard	<i>Shelburne</i>)
Croll	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Davis	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	McCutcheon	Vien
Farris	McDonald	Walker
Fergusson	McKeen	White
Flynn	McLean	Willis—(50)

Ex officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 16, 1966:

"Pursuant to the order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Pouliot, for the second reading of the Bill S-50, intituled: "An Act respecting the armed forces of countries visiting Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 30th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2.00 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Benidickson, Connolly (*Ottawa West*), Cook, Dessureault, Fergusson, Gouin, Isnor, Lang, Leonard, McDonald, Pearson, Pouliot, Rattenbury, Reid and Willis. (17)

In attendance: R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief, Senate Committees Branch.

Bill S-50, "An Act respecting the armed forces of countries visiting Canada", was further considered.

The following witnesses were heard:

Department of National Defence: Brigadier W. J. Lawson, Judge Advocate General. G/C H. A. McLearn (Air Force), Deputy Judge Advocate General.

Department of External Affairs: G. G. Riddell, Defence Liaison Division.

On Motion of the Honourable Senator Beaubien (*Bedford*) it was *Resolved* that the said Bill be amended as follows:

1. *Page 1:* Strike out lines 17 and 18 and substitute the following: "of a visiting force, the spouse of such".

2. *Page 4:* Strike out line 3 substitute the following: "of a visiting force or a dependant".

3. *Page 5:* Strike out lines 1 to 6, both inclusive, and substitute the following: "11. (1) Where a member of a visiting force or a dependant of any such member has been sentenced by a service court to undergo a punishment involving incarceration, the incarceration may, at the request of the officer in command of the visiting force and in accordance with the regulations, be".

On Motion of the Honourable Senator Gouin it was *Resolved* to report the said Bill as amended.

At 2.35 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 30th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-50, intituled: "An Act respecting the armed forces of countries visiting Canada", has in obedience to the order of reference of November 16th, 1966, examined the said Bill and now reports the same with the following amendments:

1. Page 1: Strike out lines 17 and 18 and substitute the following:
"of a visiting force, the spouse of such".

2. Page 4: Strike out line 3 and substitute the following:
"of a visiting force or a dependant".

3. Page 6: Strike out lines 1 to 6, both inclusive, and substitute the following:

"11. (1) Where a member of a visiting force or a dependant of any such member has been sentenced by a service court to undergo a punishment involving incarceration, the incarceration may, at the request of the officer in command of the visiting force and in accordance with the regulations, be".

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 31, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill S-50, respecting the Armed Forces of Countries Visiting Canada, met this day at 2 p.m., to give further consideration to the bill.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: I call the meeting to order. We have one bill before us, Bill S-50, which was heard in part on November 17 last, with Brigadier W. J. Lawson, Judge Advocate General, as the witness. I believe the committee ended with a question without time for the answer.

Would you come forward, Brigadier Lawson, and let us carry on from there. I believe you were asked to indicate important changes to the Visiting Forces (North Atlantic Treaty) Act.

Brigadier W. J. Lawson, Judge Advocate General, Department of National Defence: Yes, Mr. Chairman, that is right. The following are the principal differences between the visiting Forces (North Atlantic Treaty) Act, which is the act now in existence, and the present bill.

The most important change, of course, is the elimination of any reference to the North Atlantic Treaty from the bill. The treaty is now referred to only in section 29, which provides that the repeal of the Visiting Forces (North Atlantic Treaty) Act shall be deemed not to affect the approval, by section 3 of that act, of the agreement between the parties to the North Atlantic Treaty regarding the status of their forces.

The agreement itself which is the schedule to the Visiting Forces (North Atlantic Treaty) Act is not a schedule to the new act, but, as I have said, the parliamentary approval of the agreement, still left in the bill, is the only reference to it.

The next important amendment is to clause 5 which has been extended to include dependents. A dependant is defined by the act to mean the spouse or dependant child of a member of a visiting force. The amendment is required to comply with provisions of the Status of Forces Agreement and will give the authorities of the visiting force the same jurisdiction over dependants as they have over members of the force, that is, if the law of the country concerned provides for that jurisdiction.

Clause 6 has been similarly extended to include dependants.

The next important amendment is to clause 12. It has been amended to make clear that a member of a visiting force may exercise the powers of arrest given to all persons in Canada by sections 434, 436 and 437 of the Criminal Code.

You will perhaps recall that Senator Langlois, when dealing with the bill in the Senate, suggested that we might wish to amend this clause further to include sections 38 and 41 of the Criminal Code.

On further consideration, we do not feel that this amendment is necessary, since the sections of the Criminal Code relate to the protection of property and not to police forces, and the right to exercise the powers conferred by them could not, I believe, be taken away by the section as it is now written.

Clause 15 has been amended to make clear that the whole of the Crown Liability Act applies to claims against a visiting force. The existing section is defective in that it applies only to Subsection 1 of Section 3 of the Crown Liability Act to such a claim.

Under the clause as amended, a person in Canada who has a claim against a visiting force will have exactly the same rights as he would have were his claim against the Crown.

The CHAIRMAN: Is there not in effect a limitation on liability there?—because, for purposes of recovery of damages, the Crown is looked on as the source of realizing any damages that a person may suffer by reason of some negligence of a member of the visiting forces. But there appears to be a limitation to the extent that there is property of the visiting forces in Canada. Or does it go further than that?

Brigadier LAWSON: There is no such limitation, sir. The claimant has exactly the same rights as he would have were his claim against the crown, arising out of the activities of the Canadian forces.

The CHAIRMAN: Fine. All right.

Brigadier LAWSON: There is no limitation.

Senator POULIOT: I wonder if there are any visiting forces in Canada at the present time, Mr. Chairman. If so, where are they?

Brigadier LAWSON: Mr. Chairman, there are numerous visiting forces in Canada at the present time. There are American forces at various bases across the country. There are American forces in Ottawa. There are British officers in Ottawa and there are British officers serving in various places across the country. We have officers and men from some of the emerging African states taking training in Canada. These are all visiting forces. We have a large number of them.

Senator POULIOT: Well, can a military attaché in an embassy be considered as a visiting person?

Brigadier LAWSON: A military attaché is not a member of a visiting force. He has a diplomatic status rather than a force status.

Senator POULIOT: Well, those visiting forces that are not attachés, who do not belong to any embassy, legation or consulate, enjoy no diplomatic status, then.

Brigadier LAWSON: They have no diplomatic status, no, Mr. Chairman. They enjoy the status given to them by this act.

Senator POULIOT: Which is different from the diplomatic status.

Brigadier LAWSON: Yes, quite different, Mr. Chairman.

Senator POULIOT: And there will be no international review, if any one of the visiting forces is arrested for a crime that he has committed.

Brigadier LAWSON: No, the members of the visiting forces are subject to Canadian law.

Senator POULIOT: Just as if they were Canadian citizens.

Brigadier LAWSON: Just as if they were Canadian citizens, yes, Mr. Chairman. There are certain rules as to who may try them for their offences. In certain cases they are tried by the authorities of their own force; in other cases they are tried by the ordinary Canadian civil courts.

Senator POULIOT: Disciplinary action could be taken by the army itself, though.

Brigadier LAWSON: Disciplinary action could be taken by their own force, yes.

Senator POULIOT: Those visiting forces in Canada must be under the command of someone. Will they be under the command of the Canadian officers?

Brigadier LAWSON: No, they are under the command of their own officers.

Senator POULIOT: They are independent of the Canadian Army?

Brigadier LAWSON: Not independent. In many cases they are serving with the Canadian forces and, of course, obeying orders given to them by senior Canadian officers. This is a matter of arrangement between Canada and the government of the country from which the force comes.

Senator POULIOT: If there are two units, one Canadian and one other, within the same camp, who is the O.C.?

Brigadier LAWSON: A visiting unit would have its own commanding officer from its own force, but the commanding officer would certainly be instructed by his superiors to obey the orders of the Canadian Commandant and therefore would have to obey them.

Senator POULIOT: It would be just a matter of arrangement?

Brigadier LAWSON: A matter of arrangement.

The CHAIRMAN: We did not want to get into the different shades of colour obtained.

Brigadier LAWSON: Clause 16 is a new clause. It will place members of a visiting force in the same position as Canadian servicemen with respect to claims against the Crown arising out of death or injury to the person, in that they will have no claim if compensation is payable, by way of pension or otherwise, by their own government for the death or injury.

The CHAIRMAN: They are not going to get it both ways?

Brigadier LAWSON: No.

Clause 18 has been revised to permit the application to maritime claims of the ordinary rules for settling claims against a visiting force. At present maritime claims are largely excluded from the purview of these rules.

Clause 19 has been amended to make it possible to settle disputes arising under the act by negotiation rather than by automatic compulsory arbitration.

Clause 27 is a very important one. It is new in this act. It is taken from section 6 of the Visiting Forces (British Commonwealth) Act, which is one of the acts being repealed by this bill. It provides for mutual powers of attachment for members of the Canadian forces to the forces of a designated state and for members of the forces of that state to the Canadian forces. It also provides for such forces serving together and acting in combination.

Formerly, this section applied only to the forces of the United Kingdom, Australia, New Zealand and South Africa. Now it can be applied by the Governor in Council to any designated state.

It is not contemplated that it will be applied to states other than the United Kingdom and Australia at the present time. Our forces in Europe are serving together with the United Kingdom forces in Europe and we have personnel attached to the British forces. There are also mutual attachments between the Australian and Canadian forces.

Senator POULIOT: Why are the visiting forces here? Are they to increase the number of the Canadian army or are they here for training?

Brigadier LAWSON: This section is designed to deal with situations where you have particularly our forces serving with British troops, as they do in Germany. When they are serving with British troops, our officers have the same powers of command over the British troops they are serving with as they have over the Canadian Army, and British officers have the same powers of command over the Canadian troops as they have over their own troops. This is very necessary when you are serving in a combined type of operation.

Senator POULIOT: Who pays for the visiting forces?

Brigadier LAWSON: Each country pays for its own. Mr. Chairman, these are all the important amendments made by this bill.

The CHAIRMAN: I understand that there are three amendments proposed to the bill, though "amendment" may be too strong a word, as there is no substantial change made by them.

Senator BENIDICKSON: They are proposed by whom?

The CHAIRMAN: The Department of Justice has brought them forward. If you will look on page 1, lines 17 and 18, the proposal is that we strike out lines 17 and 18 and substitute the words:

of a visiting force, the spouse of such.

That just fits right in, taking out the words, "armed forces of the designated state," and substituting the words, "a visiting force" and it is more in harmony with the title of the bill, as a matter of fact.

Does that amendment carry?

Hon. SENATORS: Carried.

The CHAIRMAN: The second amendment is clause 9, page 4, line 3. There the proposal is to strike out line 3 and substitute:

of a visiting force or a dependant.

In other words, you are making the same language change as you did in the first amendment. Is that agreed to?

Hon. SENATORS: Agreed.

The CHAIRMAN: The third one is clause 11, and you will find that at the top of page 5. The proposal there is to strike out lines 1 to 6 and to substitute therefor the following—and as I read it you will immediately notice the language change:

Where a member of a visiting force

again, in place of the words "of the armed forces of a designated state"—

Where a member of a visiting force or a dependant of any such member has been sentenced by a service court to undergo a punishment involving incarceration, the incarceration may, at the request of the officer in command of the visiting force and in accordance with the regulations, be

The language change that we have made in the course of striking out those first six lines and substituting what I have read is to effect the use of "visiting forces" rather than "armed forces of a designated state." Is that carried?

Hon. SENATORS: Carried.

Senator POULIOT: Mr. Chairman, would it be possible to know from the witnesses where the visiting forces are located in Canada?

The CHAIRMAN: Is that a military secret?

Brigadier LAWSON: It is not a military secret, but they are located all over Canada.

The CHAIRMAN: Just give a few.

Senator POULIOT: I have a special question. There is an airport in Eastern Canada, in Labrador or Newfoundland, which is operated by the Americans. I wonder if it has been closed or not. It is not Gander; there is another one.

Senator COOK: Goose? Argentina?

Senator CONNOLLY (*Ottawa West*): Argentina?

Senator POULIOT: I will try to make my question clear. When there is an airport which is operated by the Americans, does this legislation apply to the forces over there?

Brigadier LAWSON: Yes, Mr. Chairman, it does.

Senator POULIOT: It does, even on an American airport within the boundaries of Canada?

Brigadier LAWSON: This legislation would apply. There is some special provision for the Newfoundland leased bases.

Senator POULIOT: And in the Northwest Territories?

Brigadier LAWSON: No, there is no special provision there. This act applies right across the board anywhere in the north. The only places where there are any differences are on the former leased bases in Newfoundland.

Senator POULIOT: What is that? The bases the Americans leased in Newfoundland from the British during the war. That is what I mean.

Brigadier LAWSON: There are some slight differences there.

Senator POULIOT: It does not apply to them?

Brigadier LAWSON: It applies to them, subject to these slight differences.

Senator POULIOT: What are they?

Brigadier LAWSON: I am afraid I would have to have another look at the lease agreements, but the differences are quite mild.

Senator POULIOT: I would like to have that information.

Brigadier LAWSON: I can say, Mr. Chairman, that the differences are not important.

The CHAIRMAN: Senator, if you are interested in getting a statement of the differences then I am sure I can arrange it for you.

Senator POULIOT: Yes, perhaps Brig. Lawson can write me a line, and send it to me.

The CHAIRMAN: Yes.

Senator BENIDICKSON: What bases leased by Americans or others in Canada are still active or operating?

Brigadier LAWSON: Argentina, to my knowledge, is the only one left.

Senator BENIDICKSON: What about those on the radar lines?

Brigadier LAWSON: They are not leased bases.

Senator BENIDICKSON: I see. Are there any American operated bases yet operating on the radar lines? Is that a proper question ask you?

Mr. G. G. Riddell, Defence Liaison Division, Department of External Affairs: All the sites on the Dew Line are under the control of R.C.A.F. officers. In other words, Canadian officers are in command of all the stations there.

Senator BENIDICKSON: That is enough for me, thank you.

Mr. RIDDELL: And, of course, there are civilian contractors who do some of the work there.

Senator LEONARD: What about the Bomarc stations?

Brigadier LAWSON: The Bomarc stations are purely Canadian.

Senator PEARSON: Are the contractors in control of those stations mostly American?

Mr. RIDDELL: They do not control them. They operate them. That aspect of it is paid for by the Americans. But actually, the military control is in the R.C.A.F.

Senator BENIDICKSON: And the contractor is Northern Electric?

Mr. RIDDULL: Yes—well, the contract is actually held by Federal Electric.

Senator REID: Section 11 reads:

(1) Where a member of the armed forces of a designated state, or a dependant of any such member, has been sentenced by a service court to undergo a punishment involving incarceration—

In other words, a man or a woman who is not a citizen of this country may be incarcerated?

The CHAIRMAN: If they have been found guilty of some offence they may be incarcerated here, or they may be sent to their own country for incarceration.

Brigadier LAWSON: Yes, they may be sent home.

The CHAIRMAN: It is a matter of judgment, I would say.

Senator REID: I am asking what is involved in "incarceration".

The CHAIRMAN: It is a punishment or a penalty for whatever offence is committed. If a member of a visiting force is tried by a court of the visiting force and he has passed upon him a sentence of three months in jail, then presumably he can be incarcerated in a jail maintained by Canada, or sent to his own country to be incarcerated. Are there any other questions?

Senator ISNOR: Mr. Chairman, this bill applies to armed forces. Halifax is visited from time to time by a number of training ships of the United States. They are not armed, of course. Does this definition of a visiting force cover the men on those training ships?

Brigadier LAWSON: I would say that when they are on shore they would be covered by this bill.

Senator ISNOR: Where is this defined in the bill?

The CHAIRMAN: You will find it on page 2, Senator. Section 2 (j) reads:

"Visiting force" means any of the armed forces of a designated state present in Canada in connection with official duties, and includes civilian personnel designated under section 4 as a civilian component of a visiting force.

Senator ISNOR: And it is considered that that definition is broad enough to cover them?

Brigadier LAWSON: Yes, as long as they are in Canada they are covered. That is the short answer, I think.

The CHAIRMAN: Are there any other questions? Shall I report the bill as amended?

Hon. SENATORS: Agreed.

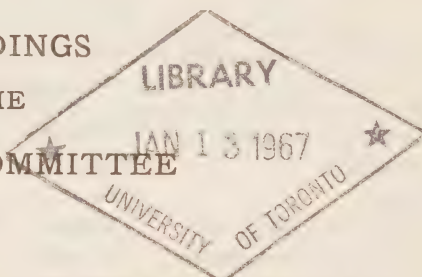
The meeting adjourned.



First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON



BANKING AND COMMERCE

The Honourable A. K. HUGESSEN, *Acting Chairman*

No. 33

Complete Proceedings on Bill C-227,

intituled: "An Act to authorize the payment of contributions by Canada towards the cost of insured medical care services incurred by provinces pursuant to provincial medical care insurance plans".

FRIDAY, DECEMBER 16th, 1966

WITNESSES:

Department of National Health and Welfare: The Honourable Allan J. MacEachen, Minister; Dr. E. H. Lossing, Director General, Health Insurance and Resources Branch.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Hugessen	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-Shelburne</i>)
Cook	Leonard	Thorvaldson
Croll	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Davis	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McDonald	White
Fergusson	McLean	Willis (49)
Flynn		

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, December 15, 1966:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Macnaughton, P.C., seconded by the Honourable Senator Hays, P.C., for second reading of the Bill C-227, intituled: "An Act to authorize the payment of contributions by Canada towards the cost of insured medical care services incurred by provinces pursuant to provincial medical care insurance plans".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macnaughton, P.C., moved, seconded by the Honourable Senator Hays, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

FRIDAY, December 16th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

In the absence of the Chairman and on Motion of the Honourable Senator Willis, the Honourable Senator Leonard was elected Acting Chairman; the Honourable Senator Leonard requested that he be allowed to vacate the Chair in favour of the Honourable Senator Hugessen on his arrival.

Present: The Honourable Senators Hugessen (*Acting Chairman*), Aird, Aseltine, Baird, Benidickson, Blois, Bourget, Burchill, Choquette, Connolly (*Ottawa West*), Fergusson, Flynn, Irvine, Kinley, Leonard, Macdonald (*Cape Breton*), McDonald, Paterson, Pearson, Pouliot, Power, Rattenbury, Roebuck, Smith (*Queens-Shelburne*), and Willis. (25)

In attendance: R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief, Senate Committees Branch.

On Motion of the Honourable Senator Pearson it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-227.

The Honourable Senator Hugessen having arrived, the Honourable Senator Leonard vacated the Chair.

Bill C-227, "Medical Care Act" was considered, clause by clause.

The following witnesses were heard:

Department of National Health and Welfare:

The Honourable Allan J. MacEachen, Minister.

Dr. E. H. Lossing, Director General, Health Insurance and Resources Branch.

The Honourable Senator Flynn Moved that the Bill be amended as follows:

Strike out paragraph (c) of subclause (1) of clause 4.

The question being put, the amendment was Declared *lost*.

The Honourable Senator Flynn further moved that the Bill be amended as follows:

Page 4: Strike out lines 19 to 29, both inclusive and substitute therefor the following:

"carry out any responsibility for the collection of premiums and assessment and payment of accounts".

The question being put, the amendment was Declared *lost*.

On Motion of the Honourable Senator Roebuck it was Resolved to report the said Bill without amendment.

At 12.10 p.m. the Committee adjourned to the call of the Chairman.

Attest:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

FRIDAY, December 16th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill C-227, intituled: "An Act to authorize the payment of contributions by Canada towards the cost of insured medical care services incurred by provinces pursuant to provincial medical care insurance plans", has in obedience to the order of reference of December 15th, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

A. K. Hugessen,
Acting Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Friday, December 16, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill C-227, to authorize the payment of contributions by Canada towards the cost of insured medical care services incurred by provinces pursuant to provincial medical care insurance plans, met this day at 10.30 a.m. to give consideration to the bill.

Senator T. D'ARCY LEONARD (*Acting Chairman*), in the Chair.

The ACTING CHAIRMAN: Honourable senators, I have accepted the acting chairmanship of the committee this morning on one condition. I would like to have Senator Hugessen in the Chair. This might be the last occasion on which he would chair this committee. If he does come to the meeting, I already have your permission to withdraw and let him take the Chair.

Honourable senators, there has been referred to the committee Bill C-227, intituled an act to authorize the payment of contributions by Canada towards the cost of insured medical care services incurred by provinces pursuant to provincial medical care insurance plans. Shall we have the usual motion with respect to printing?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

Honourable senators, we are happy to welcome the Honourable Allan J. MacEachen, Minister of National Health and Welfare, in whose name the bill stands. In the usual course of our proceedings, shall we ask the minister if he will proceed with an explanation of the bill? Is that agreeable?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN (*Senator Leonard*): Mr. MacEachen, would you be good enough to go ahead with an explanation of the bill?

Honourable Allan J. MacEachen, M.P., Minister, Department of National Health and Welfare: Mr. Chairman, ladies and gentlemen—

Senator CONNOLLY (*Ottawa West*): Is this your first appearance before this committee?

Hon. Mr. MACEachen: No, I have been here before.

Senator CONNOLLY (*Ottawa West*): You are an old hand; otherwise, I would welcome you.

The ACTING CHAIRMAN (*Senator Leonard*): I think he has been here before, in various capacities.

Senator CONNOLLY (*Ottawa West*): I just want you to understand that you are before the premier committee of Parliament.

Hon. Mr. MACFACHEN: I appreciate that. That is why I appear with such diffidence and apprehension.

Senator CONNOLLY (*Ottawa West*): As the sponsor of the bill in the Senate is not here, I want to tell you two things. We had a particularly fine exposition of the bill in the form of a maiden speech by Senator Alan Macnaughton from Montreal, a former Speaker of the House of Commons. It was recognized on both sides of the Senate that this was a particularly well done job.

I do not want to go over all the speeches made, as you are familiar with *Hansard*, but I wish to say particularly that from one of the most eminent surgeons in Canada, Senator Joseph Sullivan, we had a brilliant and exhaustive treatment of the whole problem of the medical profession in relation to medical services. I say in all frankness that the speech by Senator Sullivan was an outstanding contribution to the debate. He did not happen to say things with all of which I agree fully, but he said many things with which I did agree, with which we all agree, and we are indebted to him for his speech.

Without referring to the content of the other speeches, may I say there was a contribution by Senator Gershaw; and there was also a speech by Senator McCutcheon, who originally was a member of the royal commission; and another by Senator Phillips, a dentist. Therefore, we had a full and informed discussion on this bill in the Senate chamber.

THE ACTING CHAIRMAN (*Senator Leonard*): Thank you very much, Senator Connolly, for those remarks. If there is nothing further before the minister proceeds, I will ask him to go ahead.

Hon. Mr. MACFACHEN: Mr. Chairman, this bill, as you will have determined from reading it, is relatively simple. It provides, basically, for the payment of contributions by Canada towards the costs of providing insured medical services to provincial plans which meet a number of criteria or which follow a number of principles outlined in the bill.

The method of making these contributions is described in the bill, and you will notice as well that, after a transitional period, there is an expectation that there will be a final settlement with the provinces with respect to the contributions, and that provincial plans will operate in each province. This is not a shared-cost program in the usual sense, such as hospital insurance, for example, or the Canada Assistance Plan or any of the categorical plans.

The first aspect of the bill could be described as the coverage. We propose initially to make contributions towards the cost of services provided by medical practitioners, both general practitioners and specialists in the field of physical and mental health.

THE ACTING CHAIRMAN (*Senator Leonard*): Honourable senators, I was acting as deputy, as you know, for Senator Hugessen who has now entered the room. Might I have your permission to withdraw in place of Senator Hugessen? I might say it is the unanimous opinion of the members of the committee that they would like to sit under you today, Senator Hugessen. This might be the last occasion on which we will have that honour.

Senator CONNOLLY (*Ottawa West*): We hope that it will not be, though.

Senator A. K. HUGESSEN (*Acting Chairman*), in the Chair.

THE ACTING CHAIRMAN: Thank you, honourable senators. I cannot imagine that the affairs of this committee will be run as well by me as by Senator Leonard but you will have to bear with that. I am sorry to have interrupted you, Mr. Minister.

Hon. Mr. MACEachen: I had just begun, senator.

The ACTING CHAIRMAN (*Senator Hugessen*): Will you please continue?

Hon. Mr. MACEachen: The contributions to provincially administered medical care insurance plans will, initially, be covering physical and mental health with respect to services provided by both general medical practitioners and specialists. We have taken the view that this is the first step, the only step initially provided for in the bill, and that a complete system of health insurance or health coverage would include other health services.

You will notice that the bill was amended in the house to provide a system by which the Governor in Council could act jointly with the provinces at a later date to provide for the addition of further health services. We do not propose at the present time to recommend the addition of any further services, except with respect to the services provided by dental surgeons who furnish certain surgical procedures in hospitals.

As you will have noticed, other professions, including the optometrists, the podiatrists, the chiropractors and others, have expressed a great deal of interest in this program; but at the present time there is no provision to add further services or further professions. Initially, therefore, contributions will be made with respect to services provided by medical practitioners.

We have provided in the bill that contributions will be made only with respect to plans which cover initially 90 per cent of the population in a province. We have no particular ideology about this particular figure, except that it has been determined, by the royal commission which investigated this field very carefully, that any other proposal would likely be ineffective in providing medical services to those persons in the population who require services the most.

The experience in other countries, notably Australia, has been that the objective of providing medical services to low-income groups in the population cannot be achieved unless this feature, which we describe as universality, is provided for in the bill. You will have observed, undoubtedly, that in the field of hospital insurance, the Province of Ontario, for example, has at the present time more than 90 per cent of its population covered in the hospital insurance program. The proposal here is that we begin with 90 per cent of the population and that this coverage be extended later to 95 per cent.

So the first feature is, of course, the coverage of services; the second is the principle of universality, and the third is the principle of public administration.

We propose that contributions will be made to provincially-operated medical care plans, which are administered and operated on a non-profit basis, by a public authority appointed or designated by the government of the province. The philosophy behind this principle is that, where large sums of public money are being spent both from the federal and provincial treasuries, these funds ought to be administered in the provinces by an authority that is established by the legislature and by the provincial government.

The principle of public administration raises two questions which I would like to mention. The first has to do with the role of physician-sponsored plans. There has been a great deal of experience and expertise developed in the physician-sponsored plans, and one question that has been raised by the medical profession and others is the possible role that could be played by physician-sponsored plans. You will be aware that one of the crucial functions that can and must be performed by a public authority is the assessment of its accounts and the determination of accounts to be paid.

This is, of course, a crucial function and it must be, in our view, performed by a public authority.

Then the question is raised as to how physician-sponsored plans can operate and discharge this function in the future as they have been able to do up to the present time. Will the existence of a provincially-operated medical care plan annihilate or destroy the physician-sponsored role?

We do not think that is the case, because we believe that it will be possible for the provinces. In making their own laws, to provide, as part of the public authority, a role for the physician-sponsored plans, in which case they will be able to perform the functions that are now performed. For example, in Nova Scotia, the province with which I am most familiar, there is a physician-operated plan, Maritime Medical Care, and it does assess accounts, and we believe there is nothing in this law that would prohibit a province from utilizing the services of such physician sponsored plans and permit them to assess accounts provided these physician sponsored plans are regarded as part of the public authority and so declared by the province, and the province of Nova Scotia is running along these lines at the present time.

Senator BENIDICKSON: Have you any figures as to the percentage of the population in the provinces that have medical sponsored plans that are covered by these plans.

Hon. Mr. MACEachen: Yes, we have figures. I think in Nova Scotia, for example, it would be not more than 30 per cent in terms of coverage. We could provide you with the figures for the other three provinces. This is not a publicly operated plan; this is a private physician sponsored plan.

Senator LEONARD: Do you have the approximate percentage covered by OMSIP, the Ontario plan? I also understand that Alberta has a plan.

Hon. Mr. MACEachen: Yes, the four provinces with publicly operated plans are British Columbia, Alberta, Ontario and Saskatchewan, and we can provide you with those figures. We can tell you what the coverage is under each of these.

Senator LEONARD: What about Manitoba?

Hon. Mr. MACEachen: It is not a publicly operated plan.

Senator BENIDICKSON: They have a sponsored plan.

Senator FLYNN: Senator Gershaw said yesterday that 1.1 million were covered out of a total population of 1.4 million. Would those be the figures you have?

Hon. Mr. MACEachen: Our information is that 75 percent of the population is covered. I wanted to make the point about physician sponsored plans. People ask about the role of the insurance companies in this field, and we have taken the view, and it is reflected in the bill, that a province may designate an insurance company as a carrier within this plan and bring it within the four corners of this bill. The only condition here is that the assessment of accounts must be provided by the provincial authority, but the carriers will be enabled to collect the premiums and pay accounts but not act in the role of assessors.

Senator LEONARD: The carrier must operate on a non-profit basis?

Hon. Mr. MACEachen: Yes, it must be on a non-profit basis.

The principle of portability is at least one principle in the bill which has met with universal approval, and I won't delay the committee by going into that particular point. The question of compulsion has been raised in connection with the operation of this plan, and it seems to me that this issue can only be understood in relation, first of all, to the medical practitioner, secondly, to the patient and thirdly to the system of financing of a plan within a province. We have, I believe, met, or at least I hope we have met the views of the medical

profession in providing at least from the point of view of this bill the freedom of a medical practitioner to practice outside any provincially sponsored plan if he so wishes. The medical profession takes the view that in all probability the number of physicians wishing to practice outside a plan would be relatively small, but on a matter of principle this right in their view ought to be respected. So there is nothing in this bill that would oblige a province to require any physician to practice within any provincially operated plan, and in this respect the physician is free to stay in or outside the plan.

Senator FLYNN: And not practice at all.

Hon. Mr. MACEachen: I believe there are physicians now who do not practice inside physician sponsored plans. They opt out and succeed in practicing successfully outside physician sponsored plans or public plans if they wish.

The ACTING CHAIRMAN (*Senator Hugessen*): That would be a matter for provincial jurisdiction?

Hon. Mr. MACEachen: But there is nothing in this bill that would provide that this be denied. It is an arrangement that is really up to the province.

The ACTING CHAIRMAN (*Senator Hugessen*): I think anything put into the bill to that effect would be illegal anyway.

Senator McDONALD (*Moosomin*): In Saskatchewan can a physician operate outside the public plan?

Hon. Mr. MACEachen: Yes.

Senator SULLIVAN: If 95 per cent of the population enroll, it would be very difficult for a physician to operate outside the plan, because the other 5 per cent will be indigent people who are taken care of anyway.

Hon. Mr. MACEachen: It depends on how arrangements are made in the province. If a physician renders service to a patient in a province, and the patient is eligible for benefits, it could be possible for a physician, if he so wished, to have all his dealings with the patient and no dealings with the province. The province can reimburse the patient for the services rendered who in turn could reimburse the physician. There would be no contact, but this would be a matter for provincial arrangement. We do not prohibit this. We think the province would find it desirable. We don't oblige any patient in any province under this bill to take the services of the plan. They are free to opt out. But I come back to the point made earlier that my advice from the medical profession is that the number of physicians taking this course is likely to be small.

The 95 per cent formula has been attacked on the grounds of compulsion. If a province chooses to finance its contributions through general revenue, then the services are available to the total population as is any other service provided by the public authority.

Senator PHILLIPS: Mr. Chairman, the Minister stated there is no compulsion to the patient. I find this hard to relate to the figure of 90 per cent increased to 95 per cent general coverage. Have you given any consideration to reducing this figure, if there is no compulsion?

Hon. Mr. MACEachen: What we are saying is that medically insured services must be available to at least 90 percent of the population. In other words the services must be available. The patient is not obliged under this bill to take advantage of the public service, and in this sense availability and obligation to use are different concepts, and this is why I say that in a province deciding to finance its own program through general revenues, for example, the services are automatically available and the universality feature is met. Now the case is somewhat different if a province takes another road and decides to finance its

contributions through premiums. For example, in the Province of Ontario there is a two-pronged financial situation to finance hospital insurance. As I understand it, premiums must be paid with respect to employees in plants employing more than 10 persons. Then there is, if you wish to call it, a compulsion on the part of the employers to pay contributions with respect to these employees. And the cost in Ontario is financed through general revenue in hospital insurance.

The principle proposed here is not any different from the practice followed in that province and some other provinces with respect to hospital insurance. If you take the view that the collection of a premium is a compulsory feature, then I think you are entitled to draw that conclusion. All I would say is that the collection of a premium, in the sense of the collection of a tax, does not introduce any new feature into public policy in Canada.

Senator PEARSON: What provinces, if any, are under the scheme where they have general taxation?

Mr. MACEACHEN: In the hospital insurance?

Senator PEARSON: Yes.

Mr. MACEACHEN: All except three—Ontario, Saskatchewan and Manitoba; these are premium provinces. The others are provinces financing the hospital insurance through the general revenue.

Senator LEONARD: If the minimum is 90 per cent, my conclusion would be the province in some way would have to make sure that the needy and all those who could not pay premiums would be covered. That would mean they would have to do it themselves. Then the 10 per cent that would not be covered would be of a group that could afford to pay but who, for some reason or another, do not come in under it. Could not this be the case?

Mr. MACEACHEN: This is a possible arrangement, of course. We will not determine for the province how they will bring people in.

Senator McDONALD (*Moosomin*): I gather, from your statement a moment ago in referring to Saskatchewan, that their plan was sponsored by premiums. It is sponsored from three different sources of revenue. You have a premium of \$36 per individual or \$72 per family—this covers the best part of the cost of medicare. Then you have a 4 per cent sales tax in the province, of which half goes to medicare and the other half to education. The balance of the medicare plan is taken from the general revenues of the province. So there is an actual premium and general revenues both used to pay for medicare.

Senator PHILLIPS: I would take from that, somewhere in the debate in the other place a figure of \$28 per person was given.

Senator McDONALD (*Moosomin*): This is possible.

Mr. MACEACHEN: If I may just conclude what I have to say. The four principles are. The range of the coverage of services—in this bill, physicians' services; the concept of universality—initially, 90 per cent of the population; then, public administration; and, finally, the portability of benefits. These are the four principles that must be in operation in the provincial plan in order to be eligible for contributions from the federal Government.

Senator PHILLIPS: Mr. Chairman, I have a question for the minister based on the amendment I described as a work of modern art. The sponsor of the bill mentioned you were prepared to recommend oral surgery under this amendment; and, as a dentist, it is of great interest to me. I wonder if you could give a little more information on this?

Mr. MACEACHEN: Well, the oral surgeons or dental surgeons, as you know, are a highly qualified group of personnel in the profession. I believe there are

about 70 in Canada. They perform surgical procedures—maxillo-facial surgical procedures, to use the technical term. This is a highly skilled work, and if we did not include this group, for example, or we were not ready to include them, it would mean that this type of surgery performed by medical practitioners would be insurable, while the similar work performed by oral surgeons would not be included. The dental profession was particularly concerned about the effect that the exclusion of these surgical procedures performed by oral surgeons would have upon the training of highly qualified people in their profession, and the dental profession made a particular plea for the inclusion of this group.

I think their case is quite sound, and I think it is particularly sound in view of the fact it is an expensive or more costly type of procedure with respect to a patient. This is the only additional service that we are prepared at the present time to recommend.

Senator PHILLIPS: I interpret the minister's remarks as being that the payments for oral surgery, in referring to oral surgery, will be limited to the 60 or 70 people who have done their postgraduate work. In other words, a practising dentist with a license and qualified to do this work who has not completed his fellowship will not be paid under this plan?

Mr. MACEACHEN: Yes, that is my understanding.

Senator PHILLIPS: Mr. Minister, in your own province I think you have two people, possibly three, in Halifax, and if you are going to follow this through you will have completely removed dentists from the practice that we normally do, such as reducing fractures. In my province the medical men are not extremely keen on doing this, and try to refer it to the dentists. If you are going to follow this practice, you have completely taken away a segment of the dental practice.

Mr. MACEACHEN: Do you want to make a comment on this, doctor?

Dr. E. H. Lossing, Director-General, Health Insurance and Resources Branch—Department of National Health and Welfare: I think, Mr. Chairman, the federal bill would be permissive in the sense of permitting provinces to include the surgical procedures which are performed by dental surgeons. OMSIP, the Ontario medical plan, lists about 25 surgical procedures of the jaws and mouth that they include. I would see the federal plan in this particular aspect following the general purpose of the bill—that is, permissive in a sense, but not detailing the provincial plans. So, I would not expect that the federal law would set standards. It would set the scope of services, but it would be up to the provinces, in the main, to decide the particular services of dental surgeons which they would include.

The ACTING CHAIRMAN (*Senator Hugessen*): Honourable senators, the minister tells me that he feels he ought to go to the House of Commons now.

Senator CONNOLLY (*Ottawa West*): I think we might prevail upon the minister to stay for a little longer. Let us take a chance.

The ACTING CHAIRMAN (*Senator Hugessen*): It is the minister who takes the chance, you know.

Senator CONNOLLY (*Ottawa West*): We will stand up for him.

Dr. LOSSING: Mr. Chairman, the federal bill does not set up the details of the provincial programs. The provincial programs are provincially operated and provincially administered. I would expect that with regard to dental surgery it would be permissive in the sense that the provinces are permitted to include the services of dental surgeons. I would not expect that it would list the particular services, or would set the standards for these services. I think this would be in the realm of the provinces to decide.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, I wonder if I could ask another question on this point, because it does bear on it. As I understand the situation—and perhaps I am wrong—the intention in the standard as set out in the bill has always been that in the normal operation in a province the services of oral surgeons, these specialists, will be included automatically without any province opting for them or against them, as the case may be. In the first place, is that correct?

Mr. MACEachen: The only basis upon which we now can include this category is under the amendment in clause 4(3). In a sense this will require that this must be provided by the provincial law. In other words, the provincial law will provide that this is to be included in their insured range of services. If that occurs then action must be taken by the Governor in Council. I have already stated that I propose to recommend this to the Governor in Council, and I trust my recommendation will be accepted and, where the provincial law provides, these services rendered by dental surgeons will be insured services—that is, surgical procedures rather than services performed by dental surgeons in hospitals.

Senator SMITH (*Queens-Shelburne*): Mr. Minister, that is a little wider than what you said a while ago when you used the phrase “oral surgeons”, because there is a difference between what I recognize in an oral surgeon. That is confined to the 60 or 70 people. What about a dental surgeon in a city or town who has made a practice of going to a hospital to remove 10 or 12 teeth from a patient under hospital conditions, and with which the hospital services are concerned? Does that come under the intention of the government.

Mr. MACEachen: I apologize to the committee for using the expression “oral surgeon” and “dental surgeon” interchangeably. We have in mind oral surgeons.

Senator SULLIVAN: There is a difference.

Senator SMITH (*Queens-Shelburne*): I wonder if I can follow up this point because it is very important to a lot of people. It is important to both the profession and the people who are excepted from the service. At the present time if some province desires under clause 4(3) of the bill to include the kind of service I mentioned before—and it is a very common practice for dental surgeons to go to a hospital under certain conditions because it is not in the interests of the patient to try to perform that particular operation in the office, and I am referring to one who is a dental surgeon but who has not a specialty to his credit and would not be considered, therefore, to be an oral surgeon—could that province ask for a special Order in Council giving the entitlement to the patient to have that kind of oral surgery done in a hospital, and have it done as an insured service?

Mr. MACEachen: Senator, if the provincial law provides for this service to which you have referred or any additional service, whether provided by an oral surgeon or any other member of any health profession, then it is a matter for action on the part of the Governor in Council, based on what is in the provincial law, to determine whether this is to be an insured service. All I have said is that I propose to recommend that surgical procedures performed in a hospital by oral surgeons will be insured services.

Senator SULLIVAN: Mr. Minister, I agree wholeheartedly with what Senator Smith has said. There is a differentiation between oral and dental surgeons. Does not the term “head and neck surgery” obviate that problem?

Hon. Mr. MACEachen: It is quite possible it would.

Senator SULLIVAN: Yes, very much so.

Senator LEONARD: I would have been happier if the figure had been 80 per cent instead of 90 per cent, and had been coupled with a condition that all those unable to pay would be covered, so that the 20 per cent who could not be covered would all be persons who could afford to pay for the insurance but chose not to do so. I know that the Hall Commission's report did not recommend this method, but I am wondering whether the Minister has any comment on it.

Hon. Mr. MACEachen: I think you will find people, for example, who are well able to provide for insuring themselves but who do not, and then suddenly there may be a catastrophic event in their lives which is not insured. Well, you might take the view that this is their problem and say: "Why should we worry about it?" I would take the view that maybe while health is certainly a private matter, and there is a lot that people can do privately about their own health, it is also a public matter, and this was the conclusion of the Hall Royal Commission.

Senator MACNAUGHTON: Mr. Chairman, might I ask the minister with regard to the question of oral surgery whether when he speaks of hospitals he means public and private hospitals? Would a privately licensed hospital come under this?

Hon. Mr. MACEachen: Yes.

Senator PEARSON: Where are these oral surgeons practising? Are they in certain cities or large cities? Do you know where they are?

Hon. Mr. MACEachen: I do not know exactly where they are. They are in the larger centres, I think.

Senator PHILLIPS: According to your description of this type of work it can be done, in the Atlantic provinces, in Halifax, and in Halifax only. Then, possibly, there is one in Quebec City and in Montreal in eastern Canada.

Senator PEARSON: There is no coverage in Manitoba?

Senator PHILLIPS: Manitoba may possibly have one or two.

Senator RATTENBURY: Is an orthodontist an oral surgeon?

Senator PHILLIPS: He is a dental surgeon, but not an oral surgeon.

Senator CONNOLLY (*Ottawa West*): Under clause 4(3) if a province should ask for this coverage that has been described and discussed here then it is open to the federal Government, as a matter of policy under clause 4(3), to enlarge the scope?

Hon. Mr. MACEachen: Yes.

Senator CONNOLLY (*Ottawa West*): This is a beginning, in other words?

Hon. Mr. MACEachen: This involves the whole question of the range. I agree with Senator Phillips in that we do not provide for the services of the dental profession generally. There is no question about that. But, we are making a start with respect to services provided by medical practitioners, and there have been, as you know, demands for us to widen the scope of the bill to include all the other services. I think we are making a very important start by covering the services rendered by medical practitioners, and that perhaps we ought to get some experience before we proceed in other directions to include a further range of services.

Now, it is, it seems to me a matter of priorities to determine at a later stage what ought to be additional services. Should they be services rendered by optometrists, or should they be services rendered by the dental profession for children? Should we bring in chiropractors and podiatrists? I think it will have to be developed as to what the priority is. Should it be for a prescribed list

of drugs, for example? This would not be permissible under this measure as it now stands. I admit, having said nothing to the contrary, that this is confined to services rendered by medical practitioners, and nothing else, except that in this case, because of what seemed to be a very stark anomaly, we are making a representation as to oral surgery.

Senator MACNAUGHTON: Nevertheless, section 4, subsection (3), gives flexibility, as I understand it?

Hon. Mr. MACEachen: Oh yes.

Senator MACNAUGHTON: A later development, if you wish?

Hon. Mr. MACEachen: It gives us the authority to act where provincial law provides to add further professions and further services.

Senator FLYNN: May I ask the minister if any of the present provincial plans meet the conditions, the criteria provided in this act, probably not on the question of coverage in any way, but otherwise?

Hon. Mr. MACEachen: I would think, for example, that the OMSIP plan in Ontario with respect to coverage of physicians services would qualify, not with respect to the proportion of population.

Senator FLYNN: This act will not come into effect before July 1, 1968. Would the Government consider amendments to meet with the plans that could be adopted or modified by the provinces until then?

Hon. Mr. MACEachen: I do not think that we would want to consider amendments for an interim period. Some of the provinces at least are making advance plans in terms of the proposals in this bill, and I think it would easily disarrange things if we considered an interim measure.

Senator FLYNN: Section 8 provides that after the first five years the Government of Canada shall review the conditions of the act and transfer to the province the whole responsibility in this field, together with compensation by way of transfer of tax revenues or equalization payments. Would you suggest that this provision would free the province after that date from following any criteria included in this act or to be included in any amendments that could be brought to the act then?

Hon. Mr. MACEachen: Yes. I think that if at the end of the transitional period there is a final financial settlement in terms of compensation in some form or another, the provinces will then be able to determine what they want to do. If the plan is a good plan, public opinion will keep it in effect. If it is a bad plan, and public opinion does not like it and the provinces want to do something else, I do not see how it is prevented. I would hope that the soundness of the principles would be acceptable in the meantime and would receive unanimous acceptance.

Senator CONNOLLY (Ottawa West): It is a question of setting standards in this respect which are good and valid and high enough to be able to convince the people of the provinces that it is a viable plan and would stand up?

Hon. Mr. MACEachen: Yes. Mr. Chairman, I regret that I have to attend—

Senator CONNOLLY (Ottawa West): I am not going to let the minister say this, Mr. Chairman, because I have a carrier system arranged, and if he is urgently required he is going to be sent for. I take it that the minister's statement is completed, and if the questions are finished, I was going to suggest that clause by clause consideration of the bill be given; and I understand there are some amendments that will make it essential for the minister to be here to discuss these. I do not want to impose on his good nature. However, this is Christmastime, and he is a Scot, and all these factors ought to be taken into consideration.

Hon. Mr. MACEachen: I have another bill to deal with in the committee of the whole in the house, and I have to be there.

Senator CONNOLLY (*Ottawa West*): But we are going to allow you to stay here for a little while.

The ACTING CHAIRMAN (*Senator Hugessen*): Are there any further questions to the minister? Is the committee ready to deal with the bill clause by clause?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN (*Senator Hugessen*): Shall clause 1—Short Title—carry?

Carried.

Clause 2—"Interpretation". There are a number of interpretations, ranging from (a) to (1). Shall clause 2 carry?

Carried.

Clause 3—"Contributions". Shall clause 3 carry?

Carried.

Clause 4—"Criteria to be satisfied by plan in respect of which contribution payable".

Senator PHILLIPS: Mr. Chairman, I wish to refer to subclause (c) of clause 4. I would like to see that amended. I am not a member of the committee and therefore cannot move the amendment. I have great faith in the Leader of the Government in the Senate, and he assured me there would be no difficulty in getting someone to move an amendment if anyone desired it. He was also good enough to offer free legal services, which was a surprise to me. I am now going to ask him to follow through and arrange to have subclause (c) amended by deleting the 90 per cent and substituting a figure that will be acceptable to the provincial needs and the provincial abilities. I leave it in his hands.

Senator CONNOLLY (*Ottawa West*): That is a fair enough assertion, and based on what I said yesterday I certainly will make it possible for such an amendment to be proposed. You will hardly expect me, of course, to be bound by Cabinet solidarity to take a position in a way that a minister of the Government would take; but it is open to any member of the committee who wishes to make this amendment proposed by Senator Phillips, to do so.

Senator FLYNN: Mr. Chairman, I do not know if it would meet with Senator Phillips' approval, but I was going to move, on the suggestion of Senator Sullivan, an amendment which would strike out paragraph (c) of subclause (1) of section 4. Of course, this amendment may go further than the suggestion made by Senator Phillips.

Senator PHILLIPS: I have no objection, Senator Flynn.

Senator FLYNN: I therefore move in amendment that lines 35 to 42 of paragraph (c), subclause (1) of section 4, be deleted. Of course, if this amendment carries we shall have consequential minor amendments.

The ACTING CHAIRMAN (*Senator Hugessen*): You have heard the discussion on the motion. The motion is to strike out paragraph (c) of subclause (1) of clause 4. Is the committee ready for the question on that?

Senator KINLEY: Exactly what is the effect of that?

Senator CONNOLLY (*Ottawa West*): I think the minister might have some explanation or comments to make on this.

Hon. Mr. MACEachen: If this amendment were accepted it would mean that federal contributions would be available to provincially administered medical plans covering any percentage of the population, say one per cent.

Senator RATTENBURY: We would simply take over half of what they are spending now, without perhaps any improvement or enlargement of the coverage.

Hon. Mr. MACEachen: Exactly. There would be no prescribed proportion of the population to be incorporated.

Senator RATTENBURY: There would be no encouragement to increase the number of persons covered, yet they would have half of their present expenses paid.

Senator CONNOLLY (Ottawa West): It would be a violation of the attempt to achieve universality of coverage, which we have already explained at great length.

Senator FLYNN: It has to be made clear that the federal Government would pay less to a province. I do not think it is the case that there would be no incentive. Of course, they would get less, if the plan does not cover this minimum of 90 per cent.

Senator MACNAUGHTON: That is true, but one of the basic four principles was universality.

Senator FLYNN: I know it is against the principle of universality there.

Senator CONNOLLY (Ottawa West): That is true. The amendment is directed against the principle of universality.

Senator FLYNN: There is no argument on that.

Senator PHILLIPS: With regard to Senator Flynn's amendment, the minister has said that there may be no extension of coverage. If the program is as good as the minister seems to think, I believe it would automatically be extended.

Senator CONNOLLY (Ottawa West): We also have to consider, in connection with the principle of universality, the idea of a federal plan trying to establish a high standard of coverage, a universal standard of coverage, the standard of coverage that is going to be national in scope. It seems to me that this principle can be endangered, in my own view and my own interpretation of the amendment, by the addition of the amendment proposed. The minister may wish to comment further.

Hon. Mr. MACEachen: I would be very personally concerned at the acceptance of any such amendment, because it possibly means that there would be no real incentive inherent in this plan to extend the coverage, especially to those groups of the population who need it most. As you increase the coverage within a population you are bringing in at the top range those persons who otherwise would not be covered and who are in the least position to provide coverage for themselves.

Senator ROEBUCK: Mr. Minister, would it not result in a rather invidious distinction between the benefits given to the citizens of one province as compared with the benefits given to the citizens of another province, to have some who are covered and some who are not?

Hon. Mr. MACEachen: Yes.

Senator KINLEY: You destroy the universality of the thing. You wreck it from the point of view of efficiency. One of the main posts supporting the bill is that of universality.

Senator FLYNN: The coverage may vary from one province to another, may it not?

Senator ROEBUCK: Not very much. There is 90 per cent coverage.

Senator FLYNN: Under this sub clause (3), in one province the services of all surgery could be included, and not in another. There could be a difference of coverage.

The ACTING CHAIRMAN (*Senator Hugessen*): Is the committee ready?

Senator FLYNN: I wish to ask the minister in connection with the plan presently in force in Alberta. If we remove the 90 per cent coverage there, this scheme could possibly qualify. By the fact that the province would receive 50 per cent contribution, would you not say that this would be an incentive to extend the coverage to more people eventually?

Hon. Mr. MACEachen: I think it may. It would depend entirely on the province, at what rate they want to proceed.

For example, in Alberta, I think that 50 per cent of the people who really need the coverage are not included, on the basis that it is a system which has no prescribed proportion. We take an entirely different course in hospital insurance: we said it must be universal.

In Ontario, there is 99 per cent coverage; and I am sure that in all the other provinces it is well beyond 90 per cent.

Senator MACNAUGHTON: Mr. Minister, I might point out that there is another principle involved. If you were going to use public funds, this should be available to all the citizens, not just a part.

Hon. Mr. MACEachen: This amendment hits at the heart of the whole plan.

Senator McDONALD (*Moosomin*): If we were to accept the amendment, would not this destroy the portability of the plan? In my own province there are complete hospital services, and I find it difficult, now that I live in Ottawa, to receive some services which I was entitled to receive in my own province.

If you have ten different programs across Canada, all supplying different amounts of services, you destroy the whole purpose of medicare, as I understand it.

I would be opposed to taking out this 90 per cent. In my own province, I know there was great opposition at the commencement of the medicare plan. I venture to say that if you took a plebiscite today on the medicare plan of Saskatchewan, 90 per cent of the people, or more, would vote for including the medical profession.

Senator SULLIVAN: The medical profession can opt out. They do not have to work in it.

Senator McDONALD (*Moosomin*): That is right.

The Acting CHAIRMAN (*Senator Hugessen*): Is the committee ready for the question on the amendment?

Some hon. SENATORS: Yes.

The Acting CHAIRMAN (*Senator Hugessen*): The amendment is to strike out paragraph (c) on page 3 of the bill. Will those in favour of the amendment please raise their hands?

Will those against the amendment please raise their hands? The amendment is lost.

Senator Flynn, you were good enough to submit to me two further amendments, in case that amendment was carried.

Senator FLYNN: I will not propose them, but I have a further amendment to clause 4. I move, seconded by Senator Sullivan:

On page 4, strike out lines 19 to 29, both inclusive, and substitute therefor the following:

"Carry out any responsibility for the collection of premiums and the assessment and payment of accounts."

Adoption of this amendment would mean that subclause (2) on page 4 would read:

(2) notwithstanding paragraph (a) of subsection (1), a plan established by an Act of the legislature of a province does not fail to satisfy the criteria set forth in that paragraph by reason only that it authorizes the designation by the provincial authority of an agency or agencies to carry out any responsibility for the collection of premiums and the assessment and payment of accounts.

Senator SULLIVAN: I believe the minister knows very well that this is the attitude of the Canadian Medical Association. We are moving this amendment.

Senator LEONARD: What would be the effect?

Senator SULLIVAN: It would give freedom of choice. If you read the clause as it stands there:

individual accounts...to which the designation extends are subject to assessment and approval by the provincial authority...

That is what the minister has stated, that there had to be this authority—
and that the amounts to be paid in respect thereof shall be determined by the provincial authority.

Senator MACNAUGHTON: Do I understand that this means that a private carrier could collect, assess and pay?

Senator SULLIVAN: That is right.

Senator FLYNN: This is it, yes.

The ACTING CHAIRMAN (*Senator Hugessen*): It strikes out the requirement that the bill should be referred to and assessed by the provincial authority. That is it, is it not?

Senator FLYNN: The provincial authority could give the responsibility to a private carrier.

Senator CONNOLLY (*Ottawa West*): It seems to me that the system in this bill, Mr. Chairman, is that the amounts to be paid in respect of the service rendered are within the control of the provinces and that the public authority should do this. It should not be done by any private agency which would benefit from it. I seem to recall reading in *Hansard* of the other place that the cost of having this work done by private agencies magnified these costs very appreciably. Concerning the expenditures of public money, the provision of the bill from lines 19 to 29 on page 3 points up this public responsibility in respect of the deployment of public funds.

I believe the medical people within a province will work out a scale that will be satisfactory in the view of the great profession that is going to be affected, but I think the scale will also have to meet the very important criterion of the payment of public funds.

That is the answer I would have to the proposal. It seems to me, speaking on behalf of the Government, that what we had in mind, as a result of the conferences that have taken place with the provinces, both at the ministerial level and at lower levels, is that the clause as it stands is the one that meets the requirements of the people concerned.

Now, the minister will know a great deal more about it, of course, than I do, but I think, if I were asked that question from the floor of the Senate I would have to give an answer somewhat along that line.

Senator MACNAUGHTON: Mr. Chairman, I do not wish to talk too much or anticipate the minister, but, again, surely it is the principle of the use of public

funds. Are we prepared to allow private carriers to assess and disburse public funds? I do not think we do it in any other place.

Hon. Mr. MACEachen: Perhaps the most crucial function to be performed by a public authority in a medical care plan is the assessment of accounts. The effect of the amendment would be, from the point of view of the federal Parliament, that we would be saying that it is a matter of indifference to us whether these accounts are assessed by a public authority or by a private agency, namely, any insurance company, and that an insurance company could be delegated, under this amendment, to assess all accounts without any reference to any control by the public authority, and the federal Parliament would be paying half of the services which are assessed solely by a private agency. This is the effect. It seems essential that the assessment of accounts be undertaken by a public authority, not only to determine the pattern of utilization of services in a province, but also to have some important scrutiny over costs.

We have made a provision that physician-sponsored plans can, if designated as part of the public authority, undertake the assessment of accounts, but we certainly do not believe that it is in the public interest to have this important function taken over, as it could be, by private agencies.

Senator PHILLIPS: Mr. Chairman, Dr. Sullivan stated that this amendment had the support of the Canadian Medical Association, and I am wondering if the association was invited to appear before this committee to present its views. Was there any opportunity given to the medical association to appear before this committee?

The ACTING CHAIRMAN (*Senator Hugessen*): As temporary chairman, I am not able to answer that question, but I should have thought that, in view of the very long time taken in the House of Commons on this bill, the Canadian Medical Association had ample opportunity to submit any representations it wished to make.

Senator ROEBUCK: Have we not several very able representatives of the medical profession here?

Some Hon. SENATORS: Hear, hear.

Senator FLYNN: With all due respect to the minister, Mr. Chairman, may I suggest that the amendment does not say that the provincial authority would have no control over a private carrier or would forego its right of verification of payment of accounts. The amendment does not suggest that at all. It could be given by the provincial authorities to a private carrier, but still controlled by the provincial authority.

Senator CONNOLLY (*Ottawa West*): Yes, Senator Flynn, but surely it is clear, too, that the federal authority has some serious responsibility in this matter, because it also is expending and will be expending very considerable sums of money, and it is in the interests of the people of the country as a whole to see to it that this principle is enshrined in this legislation. It is not only the provincial authorities that would be concerned, and they are concerned, but the federal Government has this responsibility of ensuring that this precaution is taken.

Senator BAIRD: If the federal authority is called upon to pay a certain amount, will it have to pay it? For example, say the provincial government says, "Well, such and such an operation is worth so much money." Does the federal Government have to pay 50 per cent of that amount, irrespective of what price is put on the operation? That is what I am trying to get at.

Hon. Mr. MACEachen: We share 50 per cent of the per capita cost of insured services in participating provinces in respect of any provincial plan. The cost of

the service is certainly a matter for determination between the provincial government and the medical profession in a province, and we have made no effort, not do we seek to make an effort in the bill, to predetermine the schedule of fees that will be in operation within any particular province. We presume that any such schedule that is approved will be worked out between the provincial government or provincial authority and the medical profession in a province.

Senator BURCHILL: The schedule of fees have to be approved by the federal authority.

Hon. Mr. MACEachen: No.

Senator McDONALD (*Moosomin*): It has to be approved by the provincial authority.

Hon. Mr. MACEachen: Yes.

Senator BURCHILL: Not by the federal authority?

Hon. Mr. MACEachen: No.

Senator CONNOLLY (*Ottawa West*): Are there other amendments?

The ACTING CHAIRMAN (*Senator Hugessen*): No.

Senator CONNOLLY (*Ottawa West*): Mr. MacEachen will have to excuse himself, I am afraid. His presence is required elsewhere.

Senator SMITH (*Queens-Shelburne*): I take it he is opposed to the amendment.

The ACTING CHAIRMAN (*Senator Hugessen*): He does not have a vote in the committee, so it does not matter. Thank you very much, Mr. Minister.

Hon. Mr. MACEachen: I am sorry that I have to leave.

The ACTING CHAIRMAN (*Senator Hugessen*): As I understand it, the province would say to the federal Government, "Here is an operation which we think is worth \$100. We are paying \$50 of it and we want you to pay the rest." Under this clause it is quite certain that, before the federal Government could be called upon to pay the \$50, the provincial government would have to say, "Yes, it was worth \$100." That is all it means.

Senator BENEDICKSON: It is quite feasible that, for the same operation, they would pay \$100 in Ontario, \$75 in Saskatchewan, for example, and \$50 in Prince Edward Island.

Senator CONNOLLY (*Ottawa West*): Conceivably the scales might vary from province to province. I do not want to set myself up as an authority, but following these discussions in Cabinet I feel I can help out a little bit on this. I think that, as this plan gets working, the schedule of fees, arranged between the profession within a province and the provincial authorities, will settle in on a pretty standard wave across the country. I would say to the satisfaction of both the provincial authorities and the medical profession, and I think this has been the experience in the provinces where this has happened.

Senator McDONALD (*Moosomin*): In the province of Saskatchewan the physicians and surgeons have a list of fees, scheduled fees set by the Canadian Medical Association, as I understand it. When these medical care insurance commissions negotiate for the percentage of the scheduled fees set by the physicians and surgeons, of course, negotiations take place. The doctors say these are the regular fees set for the particular services they render. The medical care insurance people say "fine, we accept that, but you must have some accounts you are unable to collect in your office, and you must have some problems trying to collect other accounts, and therefore we are prepared to pay a percentage, say 85

per cent, of the schedules fees set by the Canadian Medical Association." Eventually the two parties get together and accept this. I understand the federal legislation will simply say to the provinces "if you have negotiated an arrangement with the doctors in your province to cover a percentage of the fees, then the federal authority would reimburse the province for half the rate negotiated."

Senator BENIDICKSON: Can Dr. Sullivan tell us in fact whether schedules are set normally by the Canadian Medical Association or are they set within the bounds of each province?

Senator SULLIVAN: Mr. Chairman, I feel we have missed the whole truth of the issue. Senator McDonald is right, but as actual practicing professional men, we object to the policy of control. That is why I have put in these two amendments today. We object to the policy of control which will be the result of this legislation, and to understand this one has only to look to the situation in England during the last 19 years. It could not be worse. There is really compulsion there.

Senator SMITH (*Queens-Shelburne*): That is a different situation, and we realize it is different.

Senator SULLIVAN: In a case like this where a law is enacted it can be twisted at a later date.

The ACTING CHAIRMAN (Senator Hugessen): I have been in England quite a lot, at least once or twice a year, for many years past. I have seen how the health service works there. Everybody I have met there is thoroughly enthusiastic about it. My daughter lives there, and five of my grandchildren were born under the British Medical Service, and I can assure honourable senators that they are just as healthy as our Canadian grandchildren.

Dr. LOSSING: I want to say, sir, that there are schedules of fees now in all provinces. They are not identical, but they are similar, and these are set by the various provincial associations, and it would be expected that the provinces would negotiate with the provincial medical associations the basis on which payments would be made.

The ACTING CHAIRMAN (Senator Hugessen): Is the committee ready to vote on this amendment? The amendment is on page 4 and it reads:

Strike out lines 19 to 29 inclusive and substitute therefor the following:

carry out any responsibility for the collection of premiums and the assessment and payment of accounts.

All in favour of the amendment?

All against the amendment?

The amendment is lost.

Shall Clause 4 of the bill carry?

Carried.

The ACTING CHAIRMAN (Senator Hugessen): Clause 5 dealing with the amount of contributions; shall Clause 5 carry?

Carried.

Clause 6 "Advances and payment". Shall Clause 6 carry?

Senator SULLIVAN: Might I interrupt for a moment? Would you explain the clause on page 6, subclause (c) beginning with the words

and there shall be deducted any amount paid in the year to or to the credit of the province—

etc. I would like a little clarification of that paragraph.

THE ACTING CHAIRMAN (Senator Hugessen): Can you explain this for us, doctor? This is at the end of Clause 5.

Dr. LOSSING: This is a general clause, I would say. Clauses (a), (b), and (c), require that certain things not be included, but there might be circumstances where something is improperly included. This paragraph at the end of the section would require the deduction of these things. It is not specifically aimed at any particular thing, to my knowledge. It is more of a general catch-all clause.

Senator SULLIVAN: Thank you, that clarifies it for me.

The ACTING CHAIRMAN (Senator Hugessen): Shall clause 5 carry?

Carried.

Clause 6 "Advances and payment". Shall Clause 6 carry?

Carried.

Clause 7—"Determination of question as to whether contribution payable". Shall clause 7 carry?

Carried.

Clause 8—"Payment of contributions for years commencing after March 31, 1972". Shall Clause 8 carry?

Carried.

Clause 9—"Report to Parliament". Shall Clause 9 carry?

Carried.

Shall the preamble carry?

Carried.

Shall the title carry?

Carried.

Shall I report the bill without amendment?

Senator FLYNN: Carried on division on behalf of Senator Sullivan.

The ACTING CHAIRMAN (Senator Hugessen): Carried, on division.

Thank you, honourable senators. I think that is all we have to perform this morning.

The committee adjourned.

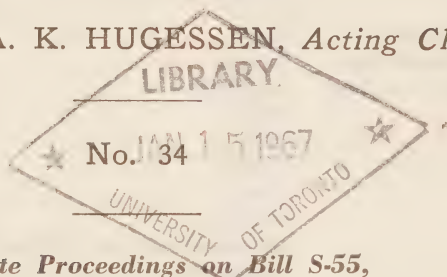


First Session—Twenty-seventh Parliament
1966

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable A. K. HUGESSEN, *Acting Chairman*



Complete Proceedings on Bill S-55,

intituled: "An Act to provide relief in certain cases against loss or hardship suffered as a result of interruptions of normal postal services".

TUESDAY, DECEMBER 20th, 1966

WITNESSES:

Department of Justice: D. S. Thorson, Assistant Deputy Minister, Legislation Section; *Department of the Registrar General:* Jean Miquelon, Q.C., Deputy Registrar General; J. W. T. Michel, Commissioner of Patents.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

THE STANDING COMMITTEE
ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Hugessen	Rattenbury
Blois	Irvine	Reid
Bourget	Isnor	Roebuck
Burchill	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Lang	Thorvaldson
Cook	Leonard	Vaillancourt
Croll	Macdonald (<i>Cape Breton</i>)	Vien
Davis	Macdonald (<i>Brantford</i>)	Walker
Dessureault	McCutcheon	White
Farris	McDonald	Willis—(49)
Fergusson	McLean	
Flynn	Molson	

Ex officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, December 19, 1966:

"Pursuant to the Order of the Day, the Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill S-55, intituled: "An Act to provide relief in certain cases against loss or hardship suffered as a result of interruption of normal postal services", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Baird, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, December 20th, 1966.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

In the absence of the Chairman, and on Motion of the Honourable Senator Leonard, the Honourable Senator Hugessen was elected Acting Chairman.

Present: The Honourable Senators Hugessen (*Acting Chairman*), Benidickson, Brooks, Burchill, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Irvine, Leonard, McDonald, Pouliot, Power and Thorvaldson. (14)

In attendance: R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief, Senate Committees Branch.

On motion of the Honourable Senator Croll it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-55.

Bill S-55, "Postal Services Interruption Relief Act", was read and considered, clause by clause.

The following witnesses were heard:

Department of Justice:

D. S. Thorson, Assistant Deputy Minister, Legislation Section.

Department of the Registrar General:

Jean Miquelon, Q.C., Deputy Registrar General.

J. W. T. Michel, Commissioner of Patents.

It was Moved by the Honourable Senator Leonard that the Bill be amended as follows:

Strike out lines 8 to 10, both inclusive, and substitute the following therefor:
"and the 7th day of August, 1965, a person has",

The question being put, the Motion was declared *lost*.

On Motion of the Honourable Senator Thorvaldson it was *Resolved* to report the said Bill without amendment.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, December 20th, 1966.

The Standing Committee on Banking and Commerce to which was referred the Bill S-55, intituled: "An Act to provide relief in certain cases against loss or hardship suffered as a result of interruptions of normal postal services", has in obdience to the order of reference of December 19th, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

A. K. HUGESSEN,
Acting Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, December 20, 1966.

The Standing Committee on Banking and Commerce, to which was referred Bill S-55, to provide relief in certain cases against loss or hardship suffered as a result of interruptions of normal postal services, met this day at 10 a.m., to give consideration to the bill.

Senator A. K. HUGESSEN, Acting Chairman, in the Chair.

The ACTING CHAIRMAN: Honourable senators, it is 10 o'clock and I see a quorum. We have for consideration this morning Bill S-55, which was discussed in the Senate yesterday afternoon. As this is a public bill, may I have the usual resolution regarding the printing of the report of our proceedings?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The witnesses who are here to support this bill are Mr. D. S. Thorson, Assistant Deputy Minister of the Legislation Section of the Department of Justice, and, from the Department of the Registrar General, Mr. Jean Miquelon, Q.C., Deputy Registrar General, and Mr. J. W. T. Michel, Commissioner of Patents.

I assume that this bill originated in the Department of Justice. I think perhaps we might start with Mr. Thorson, if that meets with the approval of honourable senators. Mr. Thorson, would you come forward, please?

Did you happen to be in the Senate yesterday afternoon, when this bill was discussed on second reading, Mr. Thorson?

Mr. D. S. Thorson, Assistant Deputy Minister, Department of Justice: No, sir, I was not, but I am familiar with what was said.

The ACTING CHAIRMAN: You are familiar with the comments that were made.

Mr. THORSON: Yes.

The ACTING CHAIRMAN: I think what the committee would like to know, Mr. Thorson, is what is the necessity for this bill and what particular acts are affected.

Senator LEONARD: We would also like to know whether there is any precedent for it.

Mr. THORSON: Mr. Chairman, the reason for the bill is that there have been a number of instances where persons have been faced with time limitation provisions under federal acts, as a result of the postal strike, and owing to the interruption of normal postal services, the time limitation period has been missed by the person concerned. Under the laws with which we are familiar where the problem arises, there is no means by which either a court or the

Minister or officials of the department concerned have any discretion to extend the time limit or to provide the kind of relief that this bill proposes.

THE ACTING CHAIRMAN: Before you go any further, Mr. Thorson, perhaps you might go into more detail regarding the number of federal acts involved.

MR. THORSON: If I might enlarge on that, the impetus for the bill comes from the Department of the Registrar General. The problem cases that have been brought to our attention are largely in the area of industrial property Acts. That is to say, the Patent Act and the Trade Marks Act most particularly, although there may have been some problems with which I am not familiar under the Industrial Design Act. Are there other problems, Mr. Miquelon, that you are aware of?

MR. JEAN MIQUELON, Deputy Registrar General, Secretary of State Department: The Industrial Design Act may be involved.

SENATOR CROLL: Under the Patent Act there would be a notice to protest and that sort of thing.

MR. THORSON: We are not aware, sir, of difficulties under other acts, but it is not inconceivable that similar problems may have arisen under acts other than the ones I have mentioned.

SENATOR THORVALDSON: For instance, the Bills of Exchange Act.

MR. THORSON: There could be difficulties under all sorts of federal statutes. I am now speaking of the future, because this bill is written in such a way that it can apply to future situations. There could be difficulties under all sorts of federal statutes, for example, under statutes that contain licensing requirements, where applications for a licence or applications for a certificate of one kind or another must be made within stipulated time periods, and, the applications are delayed as a result of an interruption of normal postal services. Without going through all of the federal statutes and examining them all and providing appropriate amendments to a great many such statutes, we felt that this was perhaps the simplest and most straightforward way of dealing with this kind of unusual situation.

SENATOR CROLL: How long was the interruption under the act that you are trying to remedy? Was it a matter of days?

MR. THORSON: The fact of the matter is that in each case of which we are aware the person came in late. Now, whether he is late by one day, two days, a week or two weeks is really irrelevant as a matter of law. There is nothing, for example, that the Commissioner or the Registrar can do about the situation, if the applicant is late at all.

SENATOR CROLL: But he is late within two specified times. He is late within the certain period of time during which there was a strike.

MR. THORSON: Yes.

SENATOR CROLL: How long was there a strike?

MR. THORSON: The strike of 1965 was of about 15 or 16 days' duration. It varied somewhat from one part of the country to the other. I believe it was a little longer in the Montreal area than in the rest of the country.

I have some detailed information here. As it applied to the Montreal area, the commencement of the strike was July 22, and its end was August 7. Normal postal service was restored approximately August 12, 1965. In Toronto it began a day later—that is to say, July 23—and it ended on July 29, with normal postal services being resumed on August 3. So it was considerably shorter in the Toronto area.

SENATOR POULIOT: Mr. Chairman, what is significant is not so much the length of the strike as the exact date and the hour of the application.

Mr. THORSON: That is correct.

Senator POULIOT: And because there are priorities, chronological priorities, for the application for patents.

Mr. THORSON: Yes, sir.

Senator POULIOT: And if you arrive before me you have a priority over me with your application.

Mr. THORSON: Yes.

Senator POULIOT: And, therefore, what I find in this draft bill is that there is nothing about the evidence of a strike. Is there anything about it? It seems to me—and I wonder what you will do, if you want to suggest an amendment to that effect, it is up to you, honourable colleagues—but it strikes me that it is most improbable that the Post Office Department and the railways would be on strike at the same time, although it may occur; and if an application could not be sent by registered mail, it could be sent by express. Therefore, the Department would get it on time. However, if both were on strike it would be important to have evidence of the strike; and before the evidence of the strike there should be evidence of the time, the day and the hour when the application had been sent. It would be essential to have a receipt from the Post Office Department, or a receipt from the express company requested to be sent with the application which would be delayed.

Mr. THORSON: I agree that these are all matters that will have to be of concern to the judge to whom the application is brought.

Senator POULIOT: No, It must be in the bill, and I am surprised that the bill does not mention it. You mention the sending of applications for patents, for instance. You know very well it is essential to know when they have been sent exactly, with the time, hour and the minute. If it is not in the bill, the bill is worthless.

Mr. THORSON: I think the point is that the judge would have no jurisdiction under this proposal, if, for example, he were to conclude there had not indeed been an interruption of postal services of a stipulated duration, or that the applicant had not done everything that he could within reason to ensure that his application was sent in good time. For example, if you look at Section 3 you will find the judge must be satisfied that the applicant did suffer loss or hardship as a result of an interruption; and that presupposes he has made a finding that there has been an interruption within the meaning of the act. Secondly, he must satisfy himself that the applicant took such reasonable steps as were open to him to comply with the time requirement or period of limitation without avail, and thirdly, that the application was made without undue delay. He must satisfy himself as to all these points before he has jurisdiction to make an order under Section 3 of the Act.

Senator POULIOT: I find this bill is most unfair to the judge because you do not help him. If you mentioned in the bill that the receipt from the Post Office Department or the express company of the application were required, well then, the judge could say, "I have no receipt. I cannot consider your request." What I want to do Mr. Thorson, in every piece of legislation, is to facilitate the work of the judge, and to make it easier for him and all those who appear before him, so if you put certain conditions in, the applicant would be tied by that and the judge would be tied by that, and it would be for the public good.

Mr. THORSON: Senator Pouliot, we thought it might be regarded as unfair to applicants to provide that, in effect, there has been an interruption in postal services within the meaning of this act only if somebody certifies as to the interruption. The way the bill is drawn, it is for the judge to determine that there has been an interruption within the meaning of the act. It is not open to any government official or any minister—nor is it open to the Governor in

Council, to say, "Yes, there has been..." or, "No, there has not been" an interruption in service within the meaning of this act in a particular instance.

Senator POULIOT: That is right, Mr. Thorson, but do you mean by what you have said that it is not necessary to send an application on time in order to have it considered by the judge?

Mr. THORSON: No, not at all. He must send it on time.

Senator POULIOT: I know that, and it would have been absurd to contend the contrary.

Mr. THORSON: Indeed.

Senator POULIOT: Now, you have an application to send. You go to the Post Office, you send it by registered mail. Will you send it by registered mail, or put it in the ordinary mail? If you send it by registered mail, you have a receipt, and why do you not attach the receipt to your application? If you go to the express company you do not leave the parcel there, pay your due, and go without your receipt; you have your receipt. Why not attach it to the application? It would prove the sending of the application, which is vital. If one does not send an application, he cannot come before a judge to ask for it. The sending of the application is the basis for the patent application.

Mr. THORSON: I agree.

Senator POULIOT: Do you agree with me on that?

Mr. THORSON: Yes, where the document was sent by registered mail the sender would normally have that evidence, and that evidence would be directly relevant to the application to the court.

Senator POULIOT: That is exactly what I have said.

Senator Cook: You could not get a receipt if the strike was on?

Mr. THORSON: That is right.

Senator POULIOT: You can have it from the express company. Nobody is bound to send it by registered mail.

Senator THORVALDSON: Surely, this bill is not intended to apply only to mail that is registered? That obviously would be too narrow a compass.

Senator POULIOT: You know, Senator Thorvaldson, with your great experience as a lawyer, that most of the legislation is not worth a picayune. I am sorry to say that.

Senator CROLL: I vote for a lot of it!

Mr. THORSON: It could be sent by registered mail; it could be sent by air mail; it could be sent by normal land transportation. There are a number of possibilities. There might have been a strike on at the time he attempted to make the application. I have used the word "strike"; but this Bill deals with any interruption.

Senator THORVALDSON: Any interruption, for whatever reason.

Mr. THORSON: Yes. But the interruption might have been the reason why he could not mail the document. I do not think it is a question of trying to lay out rigid rules that must be followed by the applicant. The position the bill takes is that it is open to the judge to receive any evidence which is relevant to determining the extent of the interruption.

Senator POULIOT: If the judge has to listen to evidence and an applicant does not send a receipt with his application, the judge would have to ask him for that when the application comes before him.

Mr. THORSON: Yes, he may very well.

Senator CROLL: But I can conceive of a situation in which a man had all his documents ready and intended to mail them on the day after the stoppage began.

This has nothing to do with receipts, or anything else. He brings in an affidavit to the judge and says: "I had all of these documents ready on that day", and then he brings in other affidavits from a lawyer's office or the Patent Office. In that case I would think the judge would accept that, and the whole thing could conceivably make sense without receipts or anything else.

Senator POULIOT: But the railways were running. Why did he not send the documents by express.

Senator CROLL: It did not occur to me that you could send them by express. I did not think of it myself.

Senator POULIOT: You think of everything. Do not tell me that.

Mr. THORSON: There are other illustrations that might be mentioned. For instance, there is mail that is posted outside of Canada and that is on its way to Canada.

Senator THORVALDSON: Yes, mail from any part of the world and from people who do not know there is a postal strike on in Canada. They would mail documents to Canada, and there would be evidence right on that mail, if it is accepted, from a post office in, say, London.

Senator CROLL: I asked how long the postal strike was on. It just happened that I was with the delegation in Russia and Czechoslovakia at the time, and I had no idea that there was a strike on.

Senator POULIOT: However, it is only the sending in of the application. There is no issuance of a patent.

Senator LEONARD: I rather gathered from what Mr. Thorson said that the wording of the section does not necessarily involve a postal strike. It is a question of interruption of normal postal services. It is possible that an Air Canada strike would interrupt the postal services.

Mr. THORSON: It might very well, sir. Such a strike might seriously interrupt normal postal services, and bring about a situation within the scope of this bill.

Senator CROLL: How could that interrupt normal services. The fact that the mail does not travel by air does not mean there is an interruption of normal postal services. The transportation by air merely expedites the delivery of mail, does it not?

Mr. THORSON: Let us say that the mail is forwarded from Washington, Vancouver or London, or some other point far distant from Ottawa. If there is an interruption in air services, whether it is those provided by Air Canada or by some foreign carrier that is operating into Canada, you might have a very serious interruption of the kind of services that are relevant to the situation we are describing.

Senator BROOKS: What about a situation such as that caused by the prospective truckers' in Montreal. There a private company was handling the transfer of mail from the post office to the terminals.

Mr. THORSON: Again, sir, I think it would depend on the facts. An example was mentioned in the Senate yesterday—flooding in the Fraser Valley. That might well result in a situation where in the community concerned there was an interruption of normal postal services. If, for example, the documents relevant to the application were mailed from Vancouver, the flooding of the Fraser Valley might or might not be relevant to the question, because alternative methods of transportation might well be available so that there is no interruption in normal services. However, as far as the mailing point is concerned, if there is no alternative method of transportation available then the situation there might constitute an interruption. I think this would have to be left up to the judge to determine in the context of a particular application.

Senator BROOKS: Is there any appeal from the judge's decision? I just forget whether there is or not.

Mr. THORSON: No, the bill does not provide for it.

Senator BROOKS: If a person has not received justice at the hands of the judge can he not appeal to any other body?

Mr. THORSON: No appeal is provided for in this bill, because the application is, of its very nature, a discretionary thing. The judge must weigh the situation and come to his own conclusions and opinions about it. It is really a matter of fact and not of law. It did not seem to be reasonable to provide an appeal on law in a situation where what we are asking the judge to do is to make up his mind as to the facts of the situation.

Senator COOK: Would this bill cover the case where the documents are lost or destroyed as a result of a fire?

The ACTING CHAIRMAN: No, this bill is simply in respect of an interruption of the postal services of Canada.

Mr. MIQUELON: With respect to that question of an appeal I should like to say that once the Exchequer Court judge hears this application he either restores the situation, or does not. I understand that then the file goes back to the Commissioner of Patents. This hearing is merely for the restoration of the situation, and to establish whether there is hardship. If there is then the rights of the applicant are restored. Once they are restored then the application for a patent would be processed before the Commissioner of Patents, whose decision is then appealable to the Exchequer Court again.

Senator LEONARD: But this is not confined merely to applications for patents.

Mr. MIQUELON: No.

Senator BROOKS: A question was asked with respect to the flooding of a river. Would not that be considered an act of God, and so not necessarily be covered by a bill of this kind?

Mr. THORSON: It might happen. Let us take the Winnipeg flood as an example. Winnipeg airport might be open in the middle of a flood such as has been described, and it might be that there would be no interruption of normal services. But if you are speaking of a document mailed, say, at a small town in the Red River valley where there are no airport facilities and where the people are, in fact, stranded, then that might amount to an interruption of normal postal services so far as that community is concerned.

Senator THOMPSON: All of which indicates the reason for giving the judge wide discretion.

Mr. THORSON: Yes, sir, that is the approach followed.

Senator BURCHALL: Would there be some delay involved in an appeal to the court? What I am getting at is that this bill is based on urgency, and so on.

Mr. THORSON: Not necessarily, senator. What concerns the applicant is a limited time limitation period. If he can bring his application before the court and establish that he did so without undue delay, then the court will be able to consider the application on its merits. There may be some delay, for example, if it is a contentious matter and there are third party interests involved which the court must take into account in the interests of equity as between all the parties. It is quite possible that the application to the court might take some considerable time. For example, you will notice in the bill that provision is made for notifying all persons who might be affected by such an application. Those persons could be out of the country. The judge to whom the application is made might insist that special arrangements be made by the applicant to bring the application to the attention of such persons.

Senator LEONARD: Do you not think that in the case of a third party there should be a right of appeal? Let us suppose a third party came in between the time of the interruption and the time of this application and the registration of a trade mark or a patent. His rights are now being affected by this application.

Mr. THORSON: Yes.

Senator LEONARD: Would not that normally be a case that would go to appeal?

Mr. THORSON: Well, this is a situation where the applicant would have to satisfy the judge that, but for the interruption, he would have had his application received by the relevant government office, whether it is the Patent Office or some other department of government, in time. He would have to satisfy him that that application would have been received before the other application was in fact received. Now, he may have considerable difficulty in persuading the judge that in that kind of a situation he should be given priority over the third party who has already filed, and who has already been granted that which he applied for. These are situations in which we felt there was really no alternative but to provide a very broad measure of discretion. When you speak of an appeal, it is arguable whether there could be an effective appeal and, indeed, whether there ought to be in the interests of equity, but really—

Senator LEONARD: You are granting a very special right to—

Mr. THORSON: Yes, it is a very special kind of relief, and one that is based on the judgment of the very person who has had the parties before him on the application, and who has listened to and assessed the relevant factors. These are not really issues of law.

Senator LEONARD: This leads me back to the first point. Is there any precedent for this kind of legislation? I do not recall it in my own experience.

Mr. THORSON: I cannot recall, sir, any precise precedent for this kind of bill. When we were considering the bill we were interested in what, if anything, had been done to deal in this kind of situation in other countries, and had considerable difficulty in tracking that down. We did discover that in the British law some provision had been made to deal with these situations, but it did it in a way that we thought was not the best way, and we elected this kind of an approach in preference to the British approach.

Senator LEONARD: Could it not be confined to what we specifically know mainly about patent applications, or things of that type, because once it becomes a precedent it may apply very broadly to penalties under tax payments, penalties under acts requiring things to be performed for penalties imposed?

Mr. THORSON: That is quite correct. So far as the 1965 Post Office strike is concerned, we are not aware of difficulties except those that have already been mentioned; but if the bill were to apply to future interruptions, whether by strike action or for any other reason, it seemed to us in fairness only reasonable to extend the same kind of possibility of relief where the problem might arise under statutes other than the industrial property acts.

Senator LEONARD: Could you not just strike out those words "or any subsequent interruption of more than 48 hours duration," and then it would be confined to the postal strike of 1965.

Mr. THORSON: Yes.

Senator BROOKS: Mr. Chairman, in that connection, Senator Leonard speaks about precedent. Is it not a fact that there was no situation such as this in any former period to cause us to make a precedent, because we did not have any strikes in the postal service, and in fact very few in any other Civil Service departments. The fact that we did have one in 1965 is really the reason for this proposed legislation, because that was the first real strike we have had in the Civil Service?

Mr. THORSON: Yes.

Senator LEONARD: My point is that this goes well beyond that.

Senator BROOKS: We have established a precedent for strikes in the Civil Service.

Senator LEONARD: Strikes otherwise, too.

Senator CROLL: Would you not obtain some fruitful information if you examined what France and Italy did? In those countries this sort of strike seemed to be very common—a day here, two days there, and they walked away. They must be doing something about it, rather than the British and the Americans, who do not seem to fall into this position.

Mr. THORSON: That was my first reaction, because it seemed to me that, particularly in France, they must have run into those situations on a number of occasions. We made some efforts to try to find out what had been done. May I confer with my associates to see if there is any information on this?

I am sorry, we have no precise information on that point.

Senator LEONARD: I would feel much happier if those words were out.

Senator CROLL: It is a little too late now is it not?

Mr. THORSON: It is difficult.

The ACTING CHAIRMAN: This situation has arisen, and apparently the only situation that we know about where anybody is liable to be damaged is under the Patent Act or the Industrial Designs Act. I would have thought it would be simpler if we made amendments to those two acts, rather than to have a broad general provision of this kind.

Senator LEONARD: It will be precedent enough if you confine it to 1965 and to patent applications, because once it is on the statute books and a somewhat similar situation arises in connection with any other interruption or any other department, this would be a precedent for that. It seems to me to be rather extraordinary legislation. I wonder if we are gaining or losing by trying to make it of general application, when we do not know exactly what the conflict may be?

Senator CROLL: But as Senator Brooks points out you have a new situation to deal with. Under legislation of the Public Service Act there would be given the right to strike, which formerly they did not have, and you cannot have them running back here every morning for a new amendment, and this extends it to the point where it may apply to others.

Senator THORVALDSEN: In answer to Senator Croll, I hope that the Senate will stop legislation of that kind which would give them the right to strike in any part of the Civil Service at all.

Mr. THORSON: Senator Croll, I can indicate to you the approach that has been followed in Britain. Under their Patent Act of 1949 there is a section that provides that rules made by the Board of Trade, which is the relevant body under the Act, may specify the hour at which the Post Office shall be deemed to be closed on any day for the purpose of the transaction by the public of business under the Act, or of any class of such business, and may specify such days as excluded days for any such purpose.

In other words, what they are doing here is providing for what we would regard as non-judicial days, where a situation like this may have arisen. That is a very mechanistic approach to the problem, and in the context particularly of the 1965 situation, it seemed to us it was too mechanistic, that it really leaves it that these situations regarded in relation to the Patent Act as not having happened, when in fact they did happen and people were coming in with competing applications. It seemed a way of dealing with the situation that left something to be desired.

The ACTING CHAIRMAN: Are you quite certain there is nothing in these acts now which allows relief of that kind?

Mr. THORSON: Not in the situations that have been brought to our attention, sir. There is no provision at all for extending these various time limitations. They are fixed in the statute, and no discretion is allowed to the commissioner or to the court to extend the various time provisions.

The ACTING CHAIRMAN: Again, I repeat, would it not be better to amend those acts?

J. W. T. Michel, Commissioner of Patents, Department of the Registrar General: The Patent Act is up for revision, but this bill will have a retroactive effect. We do not force the enactment of a new act for a few years, because the Cabinet has to confer with the county council. This is just to carry us over so as to provide rules to correct such a situation.

The ACTING CHAIRMAN: How many cases have you actually encountered where this would apply?

Mr. MICHEL: About 25, sir.

Mr. MIQUELON: Yes, about 25. Approximately half of them are discretionary. There would be about 12 or 15 which would be affected by this.

Senator BURCHILL: And would there be some opposition to going to court with those cases?

Mr. MIQUELON: I would not think so, sir.

Senator THORVALDSON: Mr. Chairman, I cannot see where there can be any harm in this legislation, and I can see so many situations in which it might be useful in the future. Entirely apart from the question of strikes in the postal service, there are any other number of types of strikes that might create difficulties, and it seems to me also that there are several other pieces of federal legislation, such as the Bills of Exchange Act, where you have the problem of protesting, and where there are very severe statutory limits fixed in those bills. I suppose there are numerous other Canadian acts under which there would be problems in cases such as interruption in postal services. Consequently, I think this is a very remedial bill, and I would prefer to have it rather than an amendment to the Patent Act.

Senator LEONARD: We have had a great many years of experience, and nobody has come along with legislation of this kind yet to remedy situations under the Bills of Exchange Act.

This being an exceptional case, I would like to see the legislation confined to a remedy of that case, and not to establish any greater precedent than that; then if anything else happens to a similar act, similar amendments can be made wherever necessary.

If I can find a seconder, I would like to move to strike out the words occurring in lines 8 and 10 of section 2 of the bill.

In other words, we would confine this bill entirely to the postal interruptions that occurred between the 22nd day of July and the 7th day of August, 1965.

Senator CROLL: Senator Leonard, the objection to that is that we endorse a principle and then we say "period". The trouble is that we clutter up our books with legislation that we never know where to find. What is the point of having to go looking here, there and everywhere, if, by endorsing the principle with the words "any subsequent interruption of normal postal services in Canada", we can deal with the problem once and for all? In any event, we are not doing anything new. We are just allowing a little discretion in the matter rather than having somebody looking all over the statute books trying to find out where this fits in or that fits in. Why bother, when it is right there in this bill?

Senator THORVALDSON: You might have scores of statutes that would have to be amended, whereas we can do it all with this bill, the principle of which I find to be very good, I must say. I think it is certainly equitable that this legislation should be passed in favour of those people who were affected seriously by that long postal strike, which was certainly an unusual occurrence in this country.

Senator BROOKS: Is it not a fact that this situation arose in the Patent Act because outside countries were affected? In other words, regarding the situation in this country itself, there are usually other means to take to get round such problems, for instance, the Bank Act and so on. As I understand it there are no cases arising in any place other than the Patent Act, and, from what I have heard, the problems respecting that particular act arose as a result of other countries, such as France, Belgium or Germany, being involved. The problem did not arise in Canada at all.

Senator THORVALDSON: Personally, I think the reason that the Bills of Exchange Act does not come into play in this matter is that banks and so on, which deal with bills of exchange, knew that there was a postal strike and, consequently, they sent their letters by express and got away from the effects of the postal strike. But I can conceive of any number of cases where even the banks might have put notes and cheques and so on in the mails and then a strike would come on and the mail would be held up for a couple of weeks. It just did not happen that way in this particular case.

Senator BROOKS: Have you a list there of the patent cases in which problems did arise?

Senator LEONARD: Just while they are looking that up, Mr. Chairman, I wonder if I could ask the officials of the Registrar General whether they would be satisfied, if, under its revision, the Patent Act contained their provisions for subsequent cases? Would that then satisfy them, rather than having it in this particular bill?

Mr. MIQUELON: I agree, sir, that once the act is up for revision, we will see to it that measures are taken.

Senator LEONARD: This is where it should be put in.

Mr. MIQUELON: Measures will be taken either in the rules or in the act to provide a remedy for such situations. It can be done as they do in England or it can be done otherwise. We know the rules in England.

Senator LEONARD: Fine. I think that is the proper place for it.

Mr. MIQUELON: This was the first strike we had in Canada in the postal services, and representations were made from the Patent Institute, who represent foreign associates and some foreign applications for patents involved. Also involved is the priority date and convention date. So they are left in the open and it is unfair to the other countries, because this is an international act, that we should not remedy the situation and give them at least the opportunity to restore their rights.

The ACTING CHAIRMAN: So far as you are concerned, an amendment to the Patent Act is all that is necessary.

Mr. MIQUELON: The Patent Act, the Trademarks Act and the Industrial Designs Act and Industrial Property Act. I do not think the Copyright Act would be affected. It is not affected.

Senator THORVALDSON: It is not affected by this particular interruption of the postal services.

Mr. MIQUELON: Not by this particular one, no. I do not know about the future. At any rate, I am fighting for my own department.

Senator BROOKS: I wonder if we could have that list now, Mr. Chairman?

Mr. MIQUELON: We have the list by numbers. We do not have the origin of the applications. Here, for example, is one application, No. 937249, where the applicants say that they have lost the right to file applications because of the late filing owing to the strike. Therefore, application 937249 cannot be issued to patent since the application, a U.S. Patent issued on July 27, 1965, thus acting as a bar to granting the Canadian patent under our section of the Patent Act.

Senator BROOKS: It arose in the United States, then?

Mr. MIQUELON: That is one case. The Commissioner of Patents tells me we have another case in the same category.

Mr. MICHEL: I know definitely of two such cases, but it will very likely turn out that there will be more.

Mr. MIQUELON: We have five cases of lost priority dates under convention, because of late filing. I have those identified only by number. There are three other applications that have been abandoned. They became abandoned for failure to reply to an office action within the time limit. The office sends an office order to provide the office with a document. If they fail to do so, the application is considered to be abandoned. There were three such cases. There were four cases of applications being forfeited under section 75, because the dues were not paid in time.

Senator BROOKS: Did any of these arise in Canada?

Mr. MICHEL: May I complete the answer, please? In the first case that Mr. Miquelon mentioned, two applications lost the right completely. In the next case, the applicant lost the priority date completely. There is nothing I can do about these cases.

In the case of an abandoned application and a forfeited application, I have some discretion, and I have been asked to advise the patent agents what to do about the situation. I told them that they might as well pay their fines and give me an affidavit. I reinstated most of those and restored the applications which had been forfeited. I told them that they might as well pay their \$25 fine for reinstatement or \$30 fine for restoration, rather than wait until the period for reinstatement or restoration was finished, because then they would have had two causes for having lost their rights, and the judge, if it did go to court, or I, if I were given the discretion according to the legislation, would have to say to them that they should have paid their fines in the first place because it would have been so much simpler.

Senator CROLL: The question was, Mr. Chairman, how many arose in Canada and how many arose outside Canada? That was the question.

Mr. MICHEL: The intent of the bill is that the situation must have arisen in Canada. I do not think we should worry about acts which have occurred outside the country.

Senator BROOKS: We are not worrying about acts happening outside the country.

Senator BENEDICKSON: Mr. Thorson does not seem to agree on that, Mr. Chairman.

Mr. THORSON: The bill describes an interruption of postal services in Canada, but your question, Senator Croll, relates to how many of the applications arose outside Canada.

Senator CROLL: Yes, that is my question.

Mr. MIQUELON: Have you got the details on that, Mr. Michel?

Mr. MICHEL: As far as I know there are some applications which have landed in Canada from other countries, but once in Canada they did not come to us.

Senator THORVALDSON: Because of the postal strike.

Senator CROLL: Mr. Thorson, will you try to get the answer to that question? Will you cross-examine him on that? I do not seem to be able to get it.

Mr. THORSON: Of the applications that you know about, how many are from applicants outside Canada? Do you have that information?

Mr. MICHEL: No, not specifically.

Mr. MIQUELON: I think we can answer that, though.

Mr. MICHEL: They are mostly from outside Canada, I would say. As far as I know, all of the delays I have here occurred in the transmission of mail from a client to the patent agent in Canada, but, if it came from the United States, it landed by plane in Montreal, for instance or in Toronto, but then it got stuck.

Mr. THORSON: I think these situations are much more likely to arise in relation to applications coming from outside Canada than from domestic applications, because in the latter case the applicant is familiar with the kind of occurrence that took place last summer, whereas the applicant from without Canada is not, and has no control over it.

Mr. MIQUELON: There are at least five applicants who have lost convention priority dates. They are definitely from outside, because they have lost their priority date for an application of patent which they made in another country.

Senator THORVALDSON: Through no fault of their own.

Mr. MIQUELON: The normal situation is that applicants have one year to file in Canada in order to keep the priority date. Now, under the unusual circumstances with which we are concerned, if the priority date fell within the strike period, then they lost it. Now, that is the situation with regard to those five foreign applications: they lost a priority date in Canada.

Mr. MICHEL: May I say, gentlemen, that 95 per cent of our applications for patents originate in foreign countries.

Mr. THORSON: Presumably the same ratio would hold true, substantially for the 1965 strike.

Senator BENEDICKSON: Yes, under these circumstances.

The ACTING CHAIRMAN: Is there any further discussion, or should we proceed section by section with the bill?

Senator BENEDICKSON: Mr. Chairman, we have with us the Deputy Minister of Justice who takes responsibility for drafting legislation which is presented to Parliament. I notice in the bill before us, Bill S-55, that there are no explanatory notes. Perhaps this is not necessary. On the other hand, you have to go down two or three sections before you understand what we are asked to deal with—particularly laymen. You will recall, Mr. Chairman, that when you presided over a recent meeting of the Standing Committee on Transport and Communications we had there specifically the repeal of one section of the Richelieu Bridge Company Act of way back in 1882. There was no reprint on the usual right hand page of the section we were repealing, and I thought Mr. Thorson ought to tell us whether or not they are slacking off on this kind of thing for legislators or whether this was just an isolated instance.

Mr. THORSON: The example you have just mentioned, concerning the Richelieu Bridge bill, was brought to my attention. As I recall it, there was an explanatory note that paraphrased—

Senator BENEDICKSON: But if anybody is conscientious they are going to look at the statute.

Mr. THORSON: Frankly, I would have to concede we erred in the drafting of that particular explanatory note. We should have set out the exact text of the section concerned and not merely attempted to say what it provided for.

For a great many years the rule has been that, where an act is being amended, detailed explanatory notes setting out the amended provisions are provided, with an indication of the purpose of the amendment. But where a new bill is brought forward, an Act that has not previously been before Parliament, the tradition has been that explanatory notes are not included.

Senator BENEDICKSON: That is the kind of bill we have here this morning?

Mr. THORSON: Yes.

The ACTING CHAIRMAN: There is no amendment to any statute in this bill.

Mr. THORSON: I do not purport to defend the wisdom of that long established tradition, but I simply mention it to you.

Senator THORVALDSON: As a matter of fact, is it not true that in the case of this bill any explanatory note would have to repeat exactly what the bill itself says, because it is that type of bill?

Mr. THORSON: Yes, and in terms only of a paraphrase of its clauses.

Senator BROOKS: I do not altogether agree with that, because I know I received this bill just a few hours before the house sat. The Government sponsor of the bill had a long explanation from the department. Anyone who wanted to get more information should have known this was dealing almost specifically with the Patent Act. I did not know, and I gather the chairman did not know because he has said so. If there had been some explanatory note in this bill saying it was dealing mostly with the Patent Act, we could have looked it up and had more information and dealt with it a little more explicitly.

Mr. THORSON: I am personally inclined to agree that would be helpful. However, in changing the practice, there are difficulties.

Senator BENEDICKSON: I have felt lately there is a slacking off in explanatory notes written in laymen's language. I have been around this place for more than 20 years, and I have just a feeling we are not getting the explanatory notes we used to get.

The ACTING CHAIRMAN: Mr. Thorson has admitted error in the Richelieu Bridge bill.

Senator BENEDICKSON: Well, that was an isolated instance.

The ACTING CHAIRMAN: Yes, but it was a specific case.

Senator BURCHILL: For the benefit of us laymen, it is very helpful indeed for you to give us all the explanation you can on the other side of the page.

Mr. THORSON: The difficulty is always whether the explanation should be provided for in the bill, or whether this is a matter that should be left to the minister responsible for the carriage of the bill, whether it is in the Senate or in the House of Commons.

Senator BURCHILL: It is just so that on second reading in the House the bill can be considered intelligently. The legal jargon is sometimes difficult for us poor laymen to follow.

Mr. THORSON: I can assure you it is also sometimes extremely difficult to draft an explanation that will satisfy all parties.

The ACTING CHAIRMAN: I think, gentlemen, our only problem is really whether we think this bill goes too far. As far as I can tell, it merely deals with the Patent Act and the International Designs Act—

Mr. THORSON: And the Trade Marks Act.

The ACTING CHAIRMAN: Yes, the Trade Marks Act. I do not think it goes as far as some honourable senators think. It can only apply in a case where the delay is in the receipt by a government department of some communication. If it is only a matter of the statutory notice, 30 days' notice or so, then you may have

given your notice and be able to prove you are within the delay necessary even though the government department had not received it within the 30 days.

Senator THORVALDSON: But it seems to me this bill is intended to affect private contracts as well.

The ACTING CHAIRMAN: Oh, no!

Senator THORVALDSON: What I mean is, for instance, under the Bills of Exchange Act the condition there would be that you would only have private contracts, but it seems to me they would be affected by this bill—and, I think, quite properly so. Am I right or wrong in that?

Mr. THORSON: Yes. It would not affect ordinary private contracts, but it might affect an arrangement where there was a statutory time limit involved.

Senator THORVALDSON: That is what I am talking about.

Mr. THORSON: It does not have any other effect. It only comes into play where a person has a time limitation set out in a statute in circumstances where there is obviously no power to do anything about the missed time limitation.

Senator BENEDICKSON: What about a tender for a contract?

Mr. THORSON: That normally would not be covered by a time limitation set out in a statute. Tenders are normally set to be called for a certain date, but that is outside the scope of any statutory provision.

The ACTING CHAIRMAN: Is the committee ready to consider the bill clause by clause? Are there any further questions to Mr. Miquelon?

Senator THORVALDSON: I notice you require notice to be sent to the Deputy Attorney General of Canada. I presume you think that to be necessary in every case under this act?

Mr. THORSON: The reason was that applications might arise under so many different kinds of acts that there is no other convenient place to which formal notice could be sent. So, should there be a governmental interest involved, the Deputy Attorney General would be the logical officer to receive notice and communicate that notice to the department of officials concerned.

Senator Cook: What happens if the 14 days' notice he has to give to the Deputy Attorney General gets delayed in the mail?

Senator Brooks: Due to another strike?

Mr. THORSON: There is no difficulty as long as notice is given within 14 days.

Senator THORVALDSON: I take it, with regard to that notice, that notice can be sent by mail or letter, and does not have to be sent personally?

Mr. THORSON: No, as long as it is in writing to the Deputy Minister.

Senator THORVALDSON: Notice in writing?

Mr. THORSON: Yes.

The ACTING CHAIRMAN: In reply to Senator Cook, on the 14 days' notice in writing, supposing there is a strike and he does not get notice, and notice has been given nevertheless. It is only in the case where legislation requires something to be received within a certain delay by a certain department; it is not the ordinary case of a notice.

Senator THORVALDSON: That is the responsibility of the applicant, to be within the 14 days.

Mr. THORSON: Yes.

The ACTING CHAIRMAN: Is the committee ready to consider the bill clause by clause? Section 1. Shall section 1 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 2?

Senator LEONARD: If I have a seconder, I move that in line 8, section 2—

The ACTING CHAIRMAN: You do not need to have a seconder in committee, Senator Leonard.

Senator LEONARD: I move that in line 8, section 2, we strike out the words after "1965" to and including the word "caused" in line 10.

The ACTING CHAIRMAN: The words:

or any subsequent interruption of normal postal services in Canada of more than forty-eight hours' duration however caused,

Senator LEONARD: I just do not like legislating blindly. I do not know how far this will cover, if we keep the words in. If the reason for this legislation is the strike of 1965, particularly in relation to patents, I think that is what we should provide for in legislation that is a precedent and rather important. Even though it is remedial in character, I would sooner we face that situation if it arises.

The ACTING CHAIRMAN: You have heard the amendment, gentlemen. It is to delete the words in lines 8 to 10 on the first page of the bill:

or any subsequent interruption of normal postal services in Canada of more than forty-eight hours' duration however caused.

Are you ready to vote on the amendment. All those in favour? Those to the contrary? The amendment is defeated.

Shall clause 2 carry?

Carried.

Shall clause 3, making of order, carry?

Carried.

Shall clause 4, directions as to notice, carry?

Carried.

Shall the preamble carry?

Carried.

Shall the title carry?

Carried.

Shall I report the bill without amendment?

Agreed.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966-67

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

No. 35

Complete Proceedings on Bill C-261,
intituled: "An Act to establish the
Canada Deposit Insurance Corporation".

FRIDAY, FEBRUARY 17th, 1967

WITNESSES:

Department of Finance: The Honourable Mitchell Sharp, Minister; R. R. Humphrys, Superintendent of Insurance; J. W. Ryan, Legislation Section, and W. E. Scott, Inspector-General of Banks.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Flynn	Molson
Aseltine	Gélinas	O'Leary (<i>Carleton</i>)
Baird	Gershaw	Paterson
Beaubien (<i>Bedford</i>)	Gouin	Pearson
Beaubien (<i>Provencher</i>)	Haig	Pouliot
Benidickson	Hayden	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i>
Cook	Leonard	<i>Shelburne</i>)
Croll	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Davis	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	Macnaughton	Vien
Farris	McCutcheon	Walker
Fergusson	McDonald	White
	McLean	Willis(—49)

Ex officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, February 16, 1967:

"Pursuant to Order, the Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill C-261, intituled: "An Act to establish the Canada Deposit Insurance Corporation", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

FRIDAY, February 17th, 1967.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

In the absence of the Chairman, and on Motion of the Honourable Senator Beaubien (*Provencher*), the Honourable Senator Leonard was elected *Acting Chairman*.

Present: The Honourable Senators Leonard (*Acting Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Flynn, Gelinas, Gouin, Haig, Isnor, Kinley, Lang, Macdonald (*Cape Breton*), Macnaughton, McDonald, Rattenbury and Walker—(17).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel, and R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief, Senate Committees Branch.

On Motion of the Honourable Senator Beaubien (*Bedford*), it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-229.

Bill C-261, "An Act to establish the Canada Deposit Insurance Corporation", was read and considered, clause by clause.

The following witnesses were heard:

Department of Finance:

The Honourable Mitchell Sharp, Minister.

R. R. Humphrys, Superintendent of Insurance.

J. W. Ryan, Legislation Section.

W. T. Scott, Inspector-General of Banks.

On Motion of the Honourable Senator Grosart it was *Resolved* to report the said Bill without amendment.

At 11.40 a.m. the Committee adjourned to the call of the Chair.

Attest:

Frank A. Jackson,
Clerk of the Committee.

STANDING COMMITTEE

REPORT OF THE COMMITTEE

FRIDAY, February 17th, 1967.

The Standing Committee on Banking and Commerce to which was referred the bill C-261, intituled: "An Act to establish the Canada Deposit Insurance Corporation", has in obedience to the order of reference of February 16th, 1967, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Friday, February 17, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill C-261, to establish the Canada Deposit Insurance Corporation, met this day at 10 a.m., to give consideration to the bill.

Senator T. D'Arcy Leonard, Acting Chairman, in the Chair.

The ACTING CHAIRMAN: Honourable senators, the Senate has referred to us Bill C-261, entitled an act to establish the Canada Deposit Insurance Corporation.

Perhaps I should say at the outset that I am a director of two companies affected by this bill, and if any members of the committee wish that I should withdraw from the chairmanship of this committee at this time, or at any other time, I shall be glad to do so.

Senator ASELTINE: Most of us have these guaranteed certificates also.

The ACTING CHAIRMAN: Then I shall carry on as your wish. May we have the usual order to print the proceedings of the committee?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

Honourable senators, we have with us today, and are very glad to welcome, the Minister of Finance, the Honourable Mitchell Sharp. With him is the Superintendent of Insurance, Mr. R. Humphrys. Is it your wish that before we proceed to deal with the bill itself, we should ask the Minister of Finance to be good enough to make a statement on the bill?

Hon. SENATORS: Agreed.

The Honourable Mitchell Sharp, Minister of Finance: May I say that Mr. W. E. Scott, the newly appointed Inspector General of Banks, is also here with us.

Mr. Chairman, I am sure that Senator Connolly (*Ottawa West*) in presenting the bill yesterday, although I have not read his remarks, outlined its general purpose.

The bill has two general purposes, or perhaps it would be better to say three. The first is to give additional security to the deposits of people of relatively modest means up to \$20,000. Secondly, to provide a sort of a facility for rediscount to enable institutions that accept deposits to improve their liquidity. Thirdly, perhaps the most important of all, as a result of the inspection and supervision of which insured institutions will be subjected, to improve the standards of financial management of institutions that accept deposits from the public.

These, Mr. Chairman, are the three general purposes of the bill that is before you.

One problem which caused some discussion in the Commons and in the house committee was the definition of deposit. It is our view that it would be unwise to try to define too carefully at this time exactly which kind of deposits will be insured. It is, of course, the intention to define deposits when the institution is in operation, so that the public may have a clear understanding of the instruments which are insured and of the protection given by this bill.

The reason that we have not attempted to define this term in the bill is that we are not quite certain yet exactly what kind of instruments may be presented to us by the various provincial organizations that may wish to take advantage of the insurance.

During the discussion in the house, an amendment was proposed to the bill to define "deposit". My officials examined that definition, which appeared on the surface to go some way to clarifying the intention. But even in the few minutes available to look at that definition, we found it was deficient in at least ten respects. Therefore, you can understand how difficult it is at the present time to define that word, until we have had an opportunity of reviewing carefully the kinds of instruments that may be presented to us.

Insurance will be compulsory for all federally incorporated deposit-taking institutions—that is, chartered banks, savings banks, federal trust and loan companies. It will be voluntary for provincial companies.

In addition, under clause 16(a) of the bill, provincial institutions must be authorized by the province of their incorporation, to apply for deposit insurance. In other words, a provincially incorporated deposit-taking institution must have the approval of its government before it can take advantage of this bill. This particular clause also led to a long debate in the house and in the house committee. The reason for the clause is that we do not feel it would be desirable to create any antagonism or conflict between the provincial governments and the federal government in the application of this legislation. If we did not have that clause there, provincial organizations might be in some doubt as to whether they should apply, whether their province would wish them to apply for insurance. Therefore, we felt, everything considered, that we should improve the climate of co-operation by providing that every provincial institution shall have the approval of its government before applying for insurance.

I recognize that there can be an argument against this clause on the grounds that the federal Government certainly has authority to establish an insurance corporation of this kind and that it ought to be available to any provincial institution which wants to take advantage of it. I would just urge upon the committee the desirability of having the active co-operation of provincial governments and the desirability of avoiding conflict in this field.

The provinces themselves undoubtedly have authority to insure deposits. Indeed, the example in Ontario is evidence on this point. Other provinces may wish to have their own insurance institutions. I do not think there is much likelihood of there being any others except in the Province of Quebec. The Province of Quebec has not decided yet what it is going to do.

I believe that for the success of this enterprise we should not only not try to force provincial institutions to join the scheme but we should in fact invite the provinces to authorize the insurance for provincially incorporated institutions.

Senator ASELTINE: Would we be encouraging them to go into the banking business, in doing that?

Hon. Mr. SHARP: The deposit-taking institutions are incorporated now in this country by both provincial and federal governments. Whether in fact the taking of deposits constitutes banking, is a question not yet decided and it will take some years before it is decided. In this act we are not saying anything about banking. We have established an institution for insuring deposits, whether they

are taken by banks or are taken by institutions which might be found by the courts to be banks.

Senator ISNOR: Would that apply equally to the provinces and to the federal Government?

Hon. Mr. SHARP: Perhaps I should go on to a point of procedure. We would like to bring provincial and federal institutions in at the same time. The federal institutions must be insured, by this bill. They have no alternative.

If we followed the normal procedures we would not insure provincial institutions until they had been inspected. In order to provide that the provincial institutions may take advantage of insurance at the same time as federal institutions, in my second reading speech in the House of Commons I said that the corporation would insure provincial institutions, without inspection, if the provincial governments which now are responsible for the inspection of those institutions, would assume the risk of loss, until the corporation had itself inspected. Therefore, a procedure is open to the provinces to bring their institutions under insurance at the same time as the federal institutions are insured.

The Ontario minister in his speech in the legislature when the Ontario Deposit Insurance Corporation was being established, indicated that he would take advantage of the federal law as soon as it was in operation. Therefore, I expect that Ontario institutions will be brought under this act quickly.

In eight of the other provinces, the officials have indicated that they welcome federal insurance plans and will facilitate the insurance of their institutions.

As to the province of British Columbia, the attorney general indicated some weeks ago that he would require all institutions accepting deposits in British Columbia, to be insured. That has not yet been translated into action, so I do not know just how that will be done.

The Province of Quebec remains the only province in which I have no indication as yet of the general attitude of the government.

Senator KINLEY: They will all have to take one or the other, or they will be in a bad position.

Hon. Mr. SHARP: I think the existence of insurance will be an attraction for business.

Senator KINLEY: They will be lame without it.

Senator WALKER: Clause 13(1)(c) says that the corporation shall insure each deposit with a member institution except so much of any one deposit as exceeds \$20,000. Supposing one person has five deposits of \$20,000, which is often the case—one is a trust, another is another kind of trust, but all in the one individual's name—I take it that under the interpretation which I would give to subparagraph (c), they would all be insured?

Hon. Mr. SHARP: No, it is not the intention to permit individuals to circumvent the intent of the law by having more than one deposit insured in a single institution. They may have various deposits insured in various institutions and increase their security that way, but, obviously, it would be nonsense to permit the establishment in one institution of five accounts of \$20,000 each and have them all insured. That is not the intention.

Senator WALKER: No, but I do not think the subsection makes it clear.

Senator ASELTINE: Suppose I had \$45,000 in one institution; I would be protected to the extent of \$20,000 in that same institution.

Hon. Mr. SHARP: That is correct. May I answer Senator Walker's question? The point will be taken care of by the definition of "deposits".

Senator WALKER: Which you have not got yet.

Hon. Mr. SHARP: That is right.

Senator WALKER: In defining that you will tell us whether or not the guaranteed certificates or the cold issuing of debentures by finance companies will be included.

Hon. Mr. SHARP: Yes. Generally speaking, what we have in mind to insure are demand deposits, notice deposits and deposits payable at a fixed time up to a period of five years.

Senator WALKER: Yes.

Hon. Mr. SHARP: That is generally speaking what we have in mind. What we want to try to avoid insuring are what might be termed securities. It is deposits that we are thinking about. Now, this is very difficult to define.

Senator WALKER: Very.

Hon. Mr. SHARP: We have in mind insuring some guaranteed investment certificates at least.

Senator WALKER: Yes.

Hon. Mr. SHARP: It would be our intention eventually to have all insured certificates for deposits clearly marked as deposits. In that way we would be distinguishing them from uninsured securities.

Senator KINLEY: Certificates all have a terminating date and the interest they give you depends upon the length of time you are giving the money.

Hon. Mr. SHARP: That is right. We are not thinking of insuring anything beyond five years.

The ACTING CHAIRMAN: There are a number of senators who have indicated that they would like to ask questions. We will hear Senator MacKenzie next.

Senator MACKENZIE: I have a question about Section 19, Mr. Chairman, dealing with the matter of the collection of premiums. Mr. Minister, will this be on the total deposit of the institution or on those below or up to the \$20,000 mark?

Hon. Mr. SHARP: Mr. Chairman, the premium will be payable only on the insured deposits.

Senator MACKENZIE: That is up to \$20,000?

Hon. Mr. SHARP: That is right.

Senator MACKENZIE: Not on the total?

Hon. Mr. SHARP: No.

Senator MACKENZIE: So that in the case of the banks which argue that they may not need insurance, they will not be assessed on their total deposits.

Hon. Mr. SHARP: That is right. They will be assessed only on their insured deposits.

Senator MACKENZIE: Related to that, I take it that you anticipate that inspection and supervision will take care of what one might term the questionable institutions which are in a sense made attractive and guaranteed up to a point by this insurance.

Hon. Mr. SHARP: In the case of federal institutions we now have what we consider an adequate system of inspection. Mr. Scott and Mr. Humphrys inspect the banks and trust and loan companies which are federally incorporated. There has not been as good a system of inspection of provincial institutions, and I think I am speaking without any need for qualification in that respect. Indeed, I would think in some provinces inspection is notably lacking. So that the improvements in standards will take place among provincial institutions rather than among federal institutions.

The ACTING CHAIRMAN: Is that sufficient, senator?

Senator MACKENZIE: I think that meets the points I had in mind, sir. I am only concerned, as you will gather, that this does give blanket coverage, as it were, to the weaker institutions, although the stronger ones which may claim they do not need any such insurance because of their size pay the bulk of the premiums. But perhaps it is appropriate in our society that the rich should help the poor. I do not know.

Hon. Mr. SHARP: May I add this, however, Mr. Chairman, that one would have thought that the security of our chartered banks was so well known and so well established that no one would ever doubt their ability to meet their liabilities, but the experience with the Montreal City and District Bank, which is one of the soundest and most conservatively run banks in the country, indicates that there can be runs on even such sound institutions. The existence of this insurance at that time would have prevented that. There would have been no run at all, because the small depositors would have known that their deposits were insured.

Senator MACKENZIE: So it would prevent a new situation of a similar type emerging for what you might term the safe institutions.

Senator WALKER: In connection with that question, what are you doing to keep the slap-happy boys in line, the little fellows who are in there now and who made so much trouble that it caused this insurance to be put on this bill? What are you doing to keep them in order? I would think with deposit insurance everybody will become very careless about investigating the soundness of these small institutions. Are you going to clamp down on them? How can you punish them and keep them in order?

Hon. Mr. SHARP: By withdrawing insurance.

Senator WALKER: Then you give the depositors two years to leave their money there. You cover them for two years. In other words, you could close them up and still protect the depositors.

Hon. Mr. SHARP: That is right.

Senator GROSART: Mr. Minister, in Section 14 of the original bill there was an additional paragraph which provided a waiting period of thirty days between proclamation and the coming into effect of Section 14. That has been withdrawn, and also the former clause 45, which was consequential, has been withdrawn. This raises the question of the timing of the coverage.

For example, and this is the first part of my question, is it possible that Ontario companies might now beat the gun, might be given permission under the Ontario act to advertise that their deposits are guaranteed up to \$20,000—advertising which could possibly appear in all provinces in which they have branches and which would, I think, create a very difficult situation for other companies? That is one part of the question. The second part is related: Have the provinces been given, or will they be given, a time limit to come under the Act? Will you say to them: "We are going to put this Act into effect. We are going to proclaim it on such and such a date. Now, you have in the meantime to let us know whether you are coming under it"? Because I think it will be of the greatest importance to any provincially incorporated company in a province which drags its feet to know and to be able to make the necessary preparations to know and to protect its own interest.

Hon. Mr. SHARP: On the first point, Mr. Chairman, the reason for the change was to make it possible to bring this Act into effect earlier than in thirty days. I agree with Senator Grosart that now that Ontario has brought in a provincial scheme, it is important for the interests of federally incorporated companies, if not for any others, that insurance be available to them; otherwise they are at an unfair and unnecessary disadvantage during the period that the Ontario scheme is in effect and the federal scheme is not.

On the point about there being a time limit for any province to bring in its institutions, I do not see really very much point in that. I think this privilege ought always to be open, if only because there will be new companies being formed from time to time. I think that public opinion would be brought to bear upon any province that denied any of its institutions the right to take insurance, unless it provided a similar kind of insurance by provincial action.

Senator GROSART: Mr. Minister, I did not mean a terminal time limit. I meant a time warning for them. You will say to them, "now here is when we are going to proclaim it."

Hon. Mr. SHARP: I have already been in touch with all of the provincial governments, telling them about our intentions and enclosing a copy of my second reading speech, saying that, as soon as this institution is in existence, we will be prepared to cover all provincially incorporated companies, if they will take the risk until such time as we do proceed with an inspection. They know that I have had one or two messages from provinces saying that they are giving their urgent consideration to the matter. I would hope that in at least nine of the provinces there would be no delay whatever in bringing their institutions under federal insurance. There are one or two where there would be no delay whatever because Mr. Humphrys has already been inspecting and supervising their provincial companies.

The ACTING CHAIRMAN: Senator Rattenbury.

Senator RATTENBURY: My question is really an extension of that asked by Senator Auldine. It is a common practice in business and with individuals at times when funds are available to deposit them and take out a deposit receipt for any amount up to \$20,000 or \$100,000. Would each of those be separately insured. They are all separate transactions.

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, it would be the intention to insure only to the extent of \$20,000 per person per institution, so that if a person or a corporation had several deposits in guaranteed investment certificates, each for \$20,000 issued by one institution, he would be insured for \$20,000 only.

Senator RATTENBURY: In spite of the fact that they are all individual transactions and would not be done to circumvent the act in any way but only as funds became available.

Mr. HUMPHRYS: All the deposits in an institution by one person or one beneficial interest would be lumped together.

Senator WALKER: That certainly is not clear in section 13.

Mr. HUMPHRYS: It would be a point that would have to be included in the definition of deposits.

Senator WALKER: Any nervous person having \$100,000 to deposit would have to go to five different institutions to guarantee that he had insurance.

Senator KINLEY: He would go to the Royal Bank for one, and the Montreal bank for another, and to various other banks. He would be all right.

Senator MACNAUGHTON: I have three short questions. In section 16, subsection (a), I take it that if the province authorizes the corporation to apply, there is an element of protection for the federal deposit company there. It seems to me that if a province authorizes a certain company or takes the responsibility of authorizing that company they must do much more than give a letter of approval; they must make sure that the company they authorize is in their opinion in good financial condition so that there is an element of protection for the federal company.

Hon. Mr. SHARP: The element of protection for the federal insurance is the co-operation of the provinces in the inspection of these institutions. We do not at

the outset, at least, rule out the possibility that inspection in some cases will be done by provincial officials, providing they have adequate inspections. I think this is highly desirable because these institutions are carrying on various kinds of business, and there may be inspections in connection with the fiduciary operations which could be co-ordinated with their position as deposit-taking institutions or financial intermediaries.

Senator MACNAUGHTON: Instead of being a matter of interference, it is really a matter of co-operation.

Hon. Mr. SHARP: Yes. I should point out that this was the subject of great debate and controversy in the Commons.

Senator MACNAUGHTON: There is a word there which I do not understand. I am referring to "constating" instrument.

Mr. J. M. Ryan, Director, Legislation Section, Department of Justice: Mr. Chairman, the expression comes from the Canadian and British Insurance Companies Act, and it means an instrument that is registered, such as letters patent or a memorandum of association, anything of that kind which has to be registered in a court or some registration area.

Senator MACNAUGHTON: Is the *caisse populaire* and its various branches being included?

Hon. Mr. SHARP: No, *caisses populaires* are specifically excluded and so are credit unions. There is other legislation which provides some guarantee for these institutions; there are both federal and provincial laws to cover them, and we felt it would not be suitable to include them as deposit-taking institutions inasmuch as they deal with their own members rather than with the public at large.

Senator MACNAUGHTON: Anyway I understand the *caisses populaires* have their own funds.

The ACTING CHAIRMAN: Senator Lang.

Senator LANG: Mr. Chairman, I wonder if the minister could enlighten us as to whether the quantum of the premium in section 19 is based on any actuarial prognosis or is it just a shot in the dark as to what the future may hold?

Hon. Mr. SHARP: Perhaps I should ask one of my advisers as to the basis for this.

Mr. W. E. Scott, Inspector General of Banks: The 1/30 of one per cent is somewhat arbitrary. I suppose that in thinking of this we tend to look at the experience in the United States where they have had a system of insurance for some 30 years. The net premium they are assessing their institutions is approximately 1/32 of one per cent. We picked a figure slightly higher, which we thought would be adequate for our institutions which are somewhat larger on the average than the institutions insured there.

Senator HOLLETT: Is that eventually paid by the depositor, the 1/30 of one per cent?

Mr. SCOTT: I suppose it is possible that, in fixing various charges that the customer does pay, eventually it does get built into the expenses.

The ACTING CHAIRMAN: What is the record of loss on the 1/32 of one per cent premium in the United States?

Mr. SCOTT: They have gradually reduced their premium there; they started with 1/10 or 1/12 of one per cent in the early years and they have built up their funds. The losses are much less than 1/32 of one per cent.

The ACTING CHAIRMAN: They have not any similar laws to those setting the amount at 1/6?

Mr. SCOTT: They achieve the same results by credits to the member institutions which are applied against the following year's premium. This is the practice they have been following for some time since their funds have reached a reasonable size. The member pays 1/12, but he also gets a credit which brings it down to the 1/32.

Hon. Mr. SHARP: Perhaps Mr. Scott might go on, for the information of the committee, to indicate approximately what happens if the fund builds up during the five-year period and then drops off.

Mr. SCOTT: That provision means that when the fund in the opinion of the corporation is adequate for the risk the corporation is assuming, there is provision to reduce the premium so that no one pays more than five years full premium on his latest deposit figure.

Perhaps it would simplify this to give a specific example. If an institution's insurable deposits are growing at a rate of 6 per cent per annum—which would be fairly close to the rate chartered banks' deposits have grown over the years—that premium of one thirtieth would, after the elapse of five or six years, drop quite quickly to about one-one-hundredth of 1 per cent. So, the operation of this clause, in the long run, should mean the institutions that are most recently in the fund or are growing most rapidly will bear somewhat more of the premium payments than the larger institutions growing somewhat more slowly.

Senator ASPLTINE: Would you explain subsection 5(b) on page 9 for me?

Mr. SCOTT: That is the section that accomplishes the reduction in premiums I was just explaining.

Senator ASPLTINE: It does not seem to me to work out. It says one-sixth. Is that not more than one-thirtieth?

Mr. SCOTT: That is equal to five years' premiums at one-thirtieth of 1 per cent.

Senator BEAUBIEN (*Bedford*): Mr. Minister, you would not consider giving the board of directors of this corporation a certain amount of discretion in what they charge a company coming in under this act? If a very strong institution that has been in business for 150 years comes in and you charge them one-thirtieth, is it right to charge someone who may be very shaky one-thirtieth? Would it not make more sense to have different classes of institutions charged a different rate?

Hon. Mr. SHARP: I would not like to have the job of deciding whether the Royal Trust is more trustworthy than the Royal Bank! It is all a matter of degree, Mr. Senator.

The way this operates, as explained by Mr. Scott, is that the large and well-established institutions will soon have paid up most of their premiums, and thereafter their rates will drop very quickly. Whereas the newer, growing institutions and the more aggressive—and, therefore, less conservative—as their liabilities increase, they will pay an increasing share. It would seem to us it would be quite impossible to give any discretion or, alternatively, to set out in the act any basis upon which to do this, other than the kind of computations that are established here.

Senator BEAUBIEN (*Bedford*): After a time the Royal Bank is paying this very small premium, and then when a new company comes in it comes in at one-thirtieth?

Hon. Mr. SHARP: Yes, it comes in at one-thirtieth.

Senator BEAUBIEN (*Bedford*): You have to earn—

Hon. Mr. SHARP: You have to earn your keep.

Senator GROSART: Mr. Chairman, I do not like seeing acts amended by Order in Council. I wonder if the minister would look again at clause 13 and consider whether there is not an obligation on the corporation to pay on each \$20,000 deposit, if the intention is, as has been indicated to us, that there shall be only one deposit, or is it an aggregate of \$20,000? I wonder if the act, as written, does not obligate the corporation.

The subheading—which, I know, is not part of the act—says, “Duty to insure.” The clause reads:

(1) The Corporation shall insure each deposit with a member institution except—

(a) and (b) are not relevant.

(c) so much of any one deposit as exceeds twenty thousand dollars.

If the intention is as indicated, should not the act say so, not that the corporation shall insure each one? Should we consider an amendment?

Hon. Mr. SHARP: Perhaps I could ask Mr. Ryan of the Department of Justice whether he thinks it would have been possible to do this—or, perhaps, Mr. Humphrys, or either of them.

The ACTING CHAIRMAN: Could we get from Mr. Ryan his view of the interpretation just given by Senator Grosart?

Mr. RYAN: Mr. Chairman, senators, the difficulty, of course, with the term “deposit” is that we have no meaning for it in the act at all. If you view the deposit as being an obligation, whether evidenced in several instruments or one instrument, of a trust company or loan company or bank to a single person, the language can fit; it is flexible enough to fit, depending on the definition of “deposit.”

Looking at it from the pure, grammatical readability point of view, it does seem to indicate to the reader who does not refer to the definition of “deposit” that we are talking about each instrument or each separate transaction in that section. There is something to be said for that too, because it may be subsequently, in a few years’ time, each deposit instrument for up to \$20,000 might be insurable, depending on the experience of the corporation. It is flexible language. That is my only comment.

Senator GROSART: Surely, we are not going to get by Order in Council a definition of “deposit” which will have no possible relationship to the meaning given the word “deposit”—“each deposit”—in the trade, in the business? Surely, this is a bad principle to say we are going to make up a new definition which has no relationship whatever and is, indeed, contrary to what “deposit” means in the ordinary way of business, and has for years? Surely, this is a bad principle? Surely, we should ask to have this clarified? We should not be asked to say, “You have to wait until we tell you what this work means.”

Senator RATTENBURY: In the event of a company going bankrupt the problem will be decided in the courts.

Hon. Mr. SHARP: The by-laws of the corporation will define this precisely, of course, because everyone must know the extent of the insurance, both the depositor and the institution.

I would like to ask Mr. Humphrys to comment further on Senator Grosart’s point. It is a very substantial point, and one causing us all some concern, but I do not know whether we can cure it effectively.

Mr. HUMPHRYS: Mr. Chairman, honourable senators, I think it is a point that has to be dealt with by specific definition because to use perhaps the ordinary sense of the word “deposit” one would include the feeling any person has when he goes to his savings account and puts some money in today and says to himself, “I am making a deposit today.” Tomorrow he might go in again and

put some more money in, and to his mind, he would say to himself, "I am making a second deposit." I do not think anyone contemplated that the balance in his savings account would be insured or, for this purpose, be regarded as being other than one deposit in the institution; and yet in the popular sense it might be made up of a whole series of transactions.

That could be taken a step further with regard to a series of guaranteed investment certificates. You might buy one for \$100 today, and next week another one for \$100. A person might think that he made two deposits, and yet the obligation for insurance would really be—you could carry the thought over—the obligation that the institution has towards him, whether he put the money in on several occasions or just on one occasion.

So, I think it is almost a practical necessity to lump together the obligations of the institution towards an individual to make this plan work.

Senator BARN: In other words, what you are trying to say is that if I, for instance, were to make a deposit today, one tomorrow and one the day after, what actually would the insurance cover, would it be the final balance or the original amount?

Mr. HUMPHRYS: It would be the total obligation that the institution has towards you in connection with your savings account or any other instrument they have issued to you up to the maximum of \$20,000.

The ACTING CHAIRMAN: Have you any thinking in connection with the difficulties of the maximum amount on a deposit account in the case of, for instance, a deposit of \$1 million or a debenture of \$1 million? Is the \$1 million deposit taken into consideration for the \$20,000 loss and for the premium, I think, on the deposit?

Mr. HUMPHRYS: That would be taken into account both in the premium and in the loss.

The ACTING CHAIRMAN: And the same for a debenture?

Mr. HUMPHRYS: That is right.

Senator WALKER: To a lawyer this is very unclear. It certainly has to be amplified, and to do so by by-law is something that Parliament will have no control over, although we know what you have in mind, Mr. Minister. Do you not agree that this is insufficient?

Hon. Mr. SHARP: I am troubled, as you and my fellow legislators are, about this clause. However, after extensive discussions with my officials I have come to the conclusion that it is an inescapable uncertainty until the by-laws are established; otherwise, we would have to put into this act now, in effect, the by-laws of the Corporation. May I suggest to the senators that I am quite confident that in due course we shall have to come back to have this law amended—it would be remarkable if we managed to get it right the first time—at which time there will be an opportunity of looking more closely at this definition and trying to circumscribe it in some way as to give Parliament more control over these transactions.

However, it seems to me that at the present time, if we are going to get this Corporation into existence quickly, which is what we want to do, we shall have to delegate this power for the time being. I promised in the House that when the by-laws are published I will be very happy to have them discussed in the House committee, if the committee wished to do that. We have nothing to hide about this. There is really a difficult technical problem involved.

May I through you, Mr. Chairman, ask Mr. Scott what the practice in this respect is in the United States?

Mr. SCOTT: I think it is comparable to what is proposed here, sir. The accounts within a single office of a bank in the United States are regarded as one deposit for insurance purposes. Of course, most banks in the United States have

only one office, so it is a simpler problem there than it is here where a bank may have a thousand or more branches. I think they recognize in the United States that some splitting of accounts is inevitable, and I do not think they are too rigorous in trying to decide where the beneficial interest lies. For example, if an account is split between the members of a family they do not dig very deeply, I understand, in order to try to find out whether the wife or the widow, or whoever it is, actually had the beneficial interest in those funds. But, basically the approach is the one we are proposing.

Senator McDONALD: With respect to your question of a moment ago concerning a deposit of \$1 million, I understand that \$20,000 of that is insured.

Mr. HUMPHRYS: That is correct.

Senator McDONALD: And they pay a premium on only \$20,000 of the \$1 million?

Hon. Mr. SHARP: That is right.

Mr. KINLEY: Speaking from memory, when I first came to Parliament bank shares had a double liability. That has been changed. I also recall from memory that when that was changed there was a responsibility between the banks—that they each had an interest in the failure of another and would come to its rescue. Is that true?

Mr. SCOTT: I think, Senator Kinley, that you are referring to an account that was called the Bank Circulation Redemption Fund which amounted to a mutual guarantee by the banks of each other's note liabilities to the public. The banks, of course, for some years have not been empowered to issue their own notes, so that fund was wound up.

Senator KINLEY: I think with regard to this law there is a need—well, Ontario has jumped ahead, and they are the biggest province. They want it, so I think Canada should have it, because banking and commerce is within federal jurisdiction. The three questions that come to my mind are: What does it cover; who pays; and how much? A question was asked here about the flexibility of the premium. As in ordinary insurance if you are in a hazardous place then you pay a high premium. It is said that the banks are perfectly safe. They will be dealing in large figures, and they will be big customers. In ordinary business that is something would demand a low premium. As I say, fixing this by law does not seem too scientific. However, as the Minister says, he is going to try it out and see how it works, and I think that that is all right. But, the definition of a deposit is an illusion. I am wondering if it is not possible to find another group of words that would give better expression to what is meant. I do not know what you could call it, but perhaps another word or combination of words could be found that would give the desired effect. I think that the \$20,000 is very important and is needed. If it were not there this would be discriminatory. It would not go to one man, but would go to another.

The ACTING CHAIRMAN: It was designed for people like you, Senator Kinley.

Senator KINLEY: Why for me.

The ACTING CHAIRMAN: Anybody with more than \$20,000.

Senator KINLEY: Thank you for the compliment. But, if the banks are going to pay—I read somewhere that one bank would have to pay a premium of \$900,000 a year for this service. That seems to be very high when there is really no risk. You know, it is the customer who will pay. If the banks have to increase their charges a bit they will justify it by the cost of this insurance. I know that the loan companies provide insurance. They insure so that if the borrower dies then the loan is paid. They do that, and the banks do it also. That is only natural, but they get as low a premium as is possible.

Hon. Mr. SHARP: May I make one or two comments on what Senator Kinley has said? I am sure the committee understands that the action taken by Ontario

was taken with the full agreement and the encouragement of the federal Government. We worked closely together, and if you look at the Ontario legislation you will see that it is modelled very largely upon the federal legislation. Our bill was being brought down at that time. I want to clarify the fact that there is no conflict here between the federal Government and the Government of Ontario.

Senator KINLEY: They jumped the gun?

Hon. Mr. SHARP: No, they did what they considered essential in the Province of Ontario at that time.

Senator GROSART: Somebody said, Mr. Minister, that it was not only a case of co-operative federalism but copying federalism.

Senator MACNAUGHTON: Mr. Chairman, I am probably raising a useless bogey, and it is not too serious, but I am concerned about parliamentary control of by-laws. I suppose the answer is that one has to consider who the board of directors of this corporation will be. The second control of parliament is in the provision that subject to the approval of the Governor in Council the board of directors may make by-laws. Your real parliamentary control is in the approval by the Governor in Council, I take it.

Hon. Mr. SHARP: That is right. Perhaps the members of Parliament would like to have an even greater control, but we believe that this is the most practical way of proceeding at the present time.

Senator WALKER: Would it not be better, Mr. Minister, for the corporation to take over all deposit insurance. You would then have the same set of rules applying throughout the country, and everybody would have to abide by them. Those rules would apply to the weaker provinces as well as to the more powerful provinces.

Hon. Mr. SHARP: I believe it is highly desirable that the federal insurance scheme should apply throughout the country and to all institutions that accept deposits. I am advised, however, that there is certainly no constitutional reason why a province cannot have its own insurance scheme relating to its own institutions.

The second question of whether the federal Parliament should go further in exercising its powers over banking is a separate question. In reply to questions in the house I said that the Government itself had not yet reached a decision. You will recall that the Porter Commission recommended that Parliament should extend its control over the so-called "near banks" on the theory that the taking of deposits constituted banking. It will be up to the courts to decide the extent of federal jurisdiction. The Government itself has not yet reached a decision as to whether it should attempt to extend its jurisdiction or its legislative control over these institutions. This is a very difficult and complicated question.

Reverting for a moment to the question we have had about what constitutes deposits, one can see that even if one were to accept that the taking of deposits constituted banking business that would not in itself settle the problem because one would have to decide what would constitute a deposit.

Senator ASSETT: I am a little concerned, Mr. Chairman. As you know, I run a law office. We have several accounts. We have the office account which is used for ordinary deposits, and being a lawyer it probably would not have \$20,000 in it. But we also have a big trust account which might contain anything from \$50,000, \$60,000 to \$100,000. If the account is insured and something happened, would it be the trust account or would it be the poor lawyer's personal account that would get the money back from the bank.

The ACTING CHAIRMAN: That is a pertinent question.

Mr. SCOTT: In the circumstances you mentioned, both accounts would be insured up to \$20,000, because there is a different beneficial interest in the trust account.

Senator ASELTINE: That is what I was worried about.

Senator BEAUBIEN (*Bedford*): If Senator Aseltine could show that five different people shared in \$100,000 that was a trust account would they be protected for \$20,000 each?

Mr. SCOTT: If the accounts were set up separately.

Senator ASELTINE: Naturally, what each client has in that trust account.

Senator BEAUBIEN (*Bedford*): You do not need a separate account for each one.

The ACTING CHAIRMAN: The minister hears the bell calling him to the other place, and therefore he must go. I wish to express appreciation for his coming here and being helpful to us. In the meantime, the officials can stay and answer any further questions. Senator Grosart?

Senator GROSART: A point that I raised in the Senate yesterday was that one of the two main differences between this bill and the Ontario act is that the Ontario act is much bolder in giving authority to the corporation to prevent the failure of a member institution; that is under section 33. The Ontario act gives the corporation, in effect, takeover power. My question is, is there sufficient power given to the corporation in this bill to prevent the failure of one of its member institutions, or is the situation that under the bill the corporation merely warns and reports and does these things, but has no authority whatsoever to step in and say, "We are not going to let you fail."?

In that connection, I wonder if I could refer also to the penalty section, section 40. As I understand the bill the corporation is required to report to the chairman of the board of a member institution if the board finds its manner of doing business to be unsatisfactory. The chairman is required under penalty to bring this to the attention of the directors, and the clause goes on to say:

and if the directors fail or neglect to incorporate such report in the minutes of a meeting of the directors as required by section 24, each director present at that meeting is guilty of an offence punishable on summary conviction.

My question to the representative of the Department of Justice is this: Is it clear that this obligation of the directors relates only to an occasion where the chairman has reported to them? It does not say so. It says the chairman must report. Does it say that in any case they are liable if they do not do it? Because it is quite possible they might not have heard of this report, if the chairman has kept it secret. Does the present wording make the directors liable if they do not act on a report that they do not see, or should there be a few words inserted, such as "such report, if and when presented"?

Mr. RYAN: Mr. Chairman, I think the provision is under two parts, the first part relating to the president or chairman, whose duty it is to present the report, and the second relating, as the case shows, where the directors fail or neglect to incorporate such report in the minutes of a meeting of the directors as required by section 24. That could only occur if there was a report before them that they neglected or failed to record. If the report was not made to them I do not see how there could be an offence under the latter part of the provision so far as the directors are concerned.

May I point out also that when this provision was prepared it was taken from a provision in the Bank Act, a similar procedure as I recall, although I do not have it before me, under which no difficulties have arisen for years; so that I felt rather safe in using the Bank Act procedure. But I do not think there could be an offence under the latter part of the provision if the report had not been presented to the meeting.

Senator GROSART: I also wished to ask about the authority given.

Mr. HUMPHRYS: On that point we have to keep in mind that this bill deals with two classes of institutions, federally incorporated and provincially incorporated institutions. So far as the federally incorporated institutions are concerned, there is already a system of regulation and supervision applying to those institutions through the Bank Act and through the Trust Companies Act and the Loan Companies Act, and it was not intended by this act to change that system. So that any discipline that may have to be applied to a federal institution would be applied through those specific acts that now regulate their activities. Since that has generally been considered satisfactory it was left without disturbance here.

Now, so far as provincially incorporated institutions are concerned and are subject to this act, there is a limit to how far Parliament could go in taking action to step in and seize their assets and take control of the institution. The ultimate discipline here against a provincial institution is withdrawal of the insurance. This is as far as we thought we could go from the constitutional point of view as respects a provincially incorporated institution which is contracting voluntarily with this federal institution.

Senator GROSART: I do not want to argue the constitutional position. It seems to me that the federal Government can take complete control of any banking operation, any operation that comes within an acceptable definition of banking. There is no definition, but I think it is generally admitted that the federal Parliament has been extremely remiss over the years, in not moving into this area, and in allowing a situation to develop where provincial governments have been incorporating companies and giving them banking powers. I do not want to get into that point, as it has been discussed very fully. I see a very great danger here, in this corporation not being given more power, that it may mean that they are going to have to wind up some companies—and we can all think of some institutions where this might happen. That would be very drastic action, forcing these companies out of business—because that is what it will do. Any company that is faced with publicity in the press saying that their insurance has been withdrawn, is going to go broke. Instead of that, would it not be desirable for this corporation to have more authority, even in respect to provincial corporations, perhaps not to seize their assets but at least to take temporary control of the corporation? I am quite concerned about this possibility. It means this corporation has been put in the position of sitting there and seeing a company go down the drain and not being able to do anything about it.

Mr. HUMPHRYS: Subject to comments that Mr. Ryan might have—we can imagine circumstances where that might be a very useful power—but we doubted that it would really be valid in an act such as this.

I think this is one of the considerations we had, senator, in trying to establish the climate of co-operation with provincial authorities. The withdrawal of insurance would be a very drastic step, as you say, and I think that this corporation, on its own, would do everything it could, by way of influence, discussion, persuasion, and also by way of consultation with the provincial authorities who have the legislative power over the company concerned, to get improper practices corrected.

Therefore, in the practical working out of the scheme, we would have some quite powerful tools to use before having to resort to the ultimate weapon of withdrawal of insurance.

Senator GOUIN: In virtue of section 33, as to the dividends which might be paid, am I right in thinking they would be paid to the single shareholder, the Minister of Finance?

Mr. HUMPHRYS: That is the intention.

Senator GOUIN: I would like to make one remark about the so-called deposits. In my mind, they are loans, loans bearing interest, loans which are repayable on demand by means of a cheque or an order of payment. Of course there are various types. We have what we call *caisses des dépôts* in French, an institution which merely receives deposits. However, generally speaking, it was assumed that it could be incorporated by the provincial government. I suppose in the case of this idea, we have to start from that point, anyway. Thank you.

Senator ISNOR: I would like to ask Mr. Humphrys, in view of what he said earlier in relation to banks and trust companies, would he enlarge on section 12, particularly subsection (2) on page 6, as to what type of inspection will be undertaken by this kind of setup?

Mr. HUMPHRYS: That represents a special authority that would be given to the directors of the corporation to conduct very formal inquiries under oath. It would be used only in most unusual circumstances, where it was necessary to inquire very deeply into a series of transactions.

The normal type of inspection service, as respects federal institutions, would be carried out as referred to in section 21. Section 21(1) specifies that the Inspector General of Banks would examine, on behalf of the corporation, all the banks; and the Superintendent of Insurance shall examine, on behalf of the corporation, the affairs of federal trust companies and federal loan companies.

Under section 22, a person designated by the corporation is to examine the affairs of each provincial institution. That person might be the Superintendent of Insurance, it might be the provincial supervisors if the province has an adequate system of supervision; or it might be the staff of the corporation itself if it should get to the point of hiring its own inspectors; or it might be a firm of accountants that the corporation might hire for the purpose of making a particular inspection. There is a variety of techniques which could be used for provincial institutions.

Senator ISNOR: That is going to mean a big undertaking, is it not? If you take the banks alone, there are 5,500 offices. One trust company I know of has 32 offices carrying on their own inspection. Would not that be a duplication of work?

Mr. HUMPHRYS: Since the existing legislation relating to trust companies and loan companies and also to banks, requires these named officials to make an annual inspection now, it is not thought that this would be a duplication.

It was thought that, since those officers have to inspect those institutions at the present time, they would be able to report to this corporation on the basis of the inspections that they are now required to make, and would not have to make another inspection for the corporation alone. I think there would be no duplication.

Senator WALKER: In that connection, Mr. Humphrys, there is sufficient protection afforded under the machinery you have at the present time under the legislation. Is it not a fact that, for instance, when Prudential Finance Corporation got into that imbroglio, would not that be as a result of not having proper supervision or as a result of lack of existing supervision and regulations?

Mr. HUMPHRYS: I think the problem there was the lack of any regulatory legislation that permitted inspection or permitted action to be taken in connection with that institution. It was a type of institution that would not be covered by this legislation.

Senator WALKER: It would not be covered by this deposit insurance legislation?

Mr. HUMPHRYS: No.

Senator WALKER: What is going to be done in connection with institutions such as that? Do you not propose to bring them into your orbit eventually?

Mr. HUMPHRYS: The Minister of Finance announced last December his intention of meeting with appropriate ministers from the several provinces to discuss this very question of finance companies and the type of financial intermediary institutions that now seem to fall in an area that is between the present types of regulated institutions.

With the recent announcement of the federal-provincial conference of a broader type dealing with financial institutions, I think finance companies of this type will be given very serious attention by both levels of government.

Senator GROSART: Would "deposit taking institutions" be broad enough to include revolving credit accounts or narrow enough to exclude them?

Mr. HUMPHRYS: Revolving credit accounts, as I understand them, are mostly with retail stores and they are in a line of business that would not bring them within the scope of the definition here, which is intended to encompass banks and companies that are of the type covered by the Trust Companies Act and the Loan Companies Act.

Senator GROSART: In what section is that definition? Are we at section 13 again?

Mr. HUMPHRYS: No. Sections 9 and 10. Section 9 says that a federal institution is a bank, or a company under the Trust Companies Act or the Loan Companies Act. Section 10 says that a provincial institution would be a company that falls within the definition of trust company under the Trust Companies Act or a loan company under the Loan Companies Act, and that accepts deposits. So an effort is made to try to achieve some degree of homogeneity in the kind of institutions which are swept within this plan.

Senator GROSART: Am I right in saying that effective coverage will be limited to what are now generally known as banks, banks proper, trust and loan companies?

Mr. HUMPHRYS: Yes.

The ACTING CHAIRMAN: Has the corporation an option to refuse a company that does qualify under the description.

Mr. HUMPHRYS: If it is a provincially incorporated institution, yes, it would be accepted and insured under this plan only with the approval of the corporation.

The ACTING CHAIRMAN: Senator Aseltine, then Senator Flynn.

Senator ASELTINE: My question, Mr. Chairman, was right along that line. In most of the provinces we have very large credit unions which carry on banking business, accept deposits, make loans and are incorporated provincially. I take it that under this Section 10 they would not be included.

Mr. HUMPHRYS: That is correct, senator. It was not intended to include credit unions or caisses populaires.

Senator FLYNN: I was just wondering what would happen when a member institution had its insurance terminated? I understand that it is compulsory to be insured. What happens after the termination of the insurance for valid reasons?

Mr. HUMPHRYS: Any deposits received by that institution after termination of the insurance takes place would not be insured, but deposits that are on the books of the institution at the time termination takes place would continue to be insured for a period of two years or until the maturity date of the instrument if it were a time deposit. The institution concerned would be required to give notice to all its depositors that insurance had been terminated.

Senator FLYNN: If it is compulsory to be insured, what happens when insurance is terminated?

Mr. HUMPHRYS: Insurance would not be terminated for a federal institution unless it ceased taking deposits.

Senator FLYNN: It would have to cease taking deposits after the termination of the insurance?

Mr. HUMPHRYS: Yes.

The Acting CHAIRMAN: Are there any further questions?

Senator MACNAUGHTON: Mr. Chairman, under sections 21 to 24 inclusive, dealing with inspection, the word "examination" is used in all paragraphs except the last. "Examination" does not mean "audit", does it? It means a cursory inspection or cursory examination.

Mr. HUMPHRYS: We do not regard it as cursory, senator. It is a word used in the legislation that governs insurance companies, trust companies and loan companies. We regard it as a broader—

The Acting CHAIRMAN: Rigorous.

Mr. HUMPHRYS: —type of inspection. That is, one not confined to checking the accuracy of the books of record, but rather one that encompasses not only ascertaining that the books of record are correct but also a study—or examination, which is the word that comes to my mind—of management practices and of the entire operation of the company. So that the word was chosen because we thought it gave the connotation of a broader scope of inspection than would be encompassed by the word "audit".

The Acting CHAIRMAN: I can assure Senator Macnaughton that the dominion inspection is very rigorous.

Senator GROSART: I think the reason for the use of the word, Mr. Chairman, is that we are all brought up to understand that one of the essentials of examinations is that all answers have to be given.

Senator WALKER: May I ask Mr. Humphrys, as a matter of interest, why our credit unions are exempted from this deposit insurance, other than for political reasons.

Mr. HUMPHRYS: The fact is—

Senator WALKER: That that is the answer.

Mr. HUMPHRYS: With that stipulation being an element of it, I think that it must be recognized that there are a great many credit unions; they have been formed under provincincial legistlation and have operated under the supervision of that legislation; many of them are very small and operate in very local areas, in villages, parishes or small communities. The system that has grown up in the last sixty or sixty-five years since credit unions started has been one where the responsibility for them, the supervision, the inspection, the governing legislation, has all been on a provincial basis; and so far, to my knowledge, there has been no real thought that it is appropriate now—except for problems relating to banking which may have to be faced at some time—there has been no real thought that it would be appropriate for federal supervision to extend to so many small and local institutions.

Now, truly, in the credit union movement and caisse populaire movement we do see examples of very large institutions operating on a community basis which come very close to being public deposit taking institutions. When you get a big community credit union, where almost anyone in the community can join, it becomes very close to a public institution. But having regard to the structure of the whole system of formation and supervision of credit unions, so far there has been no move or indication on the part of the federal government to undertake or move into that area.

There is one element there that may be of interest in that there is some federal legislation relating to central credit unions; in most of the provinces there is a central credit union which acts as a central for the local credit unions. The locals keep deposits with the central and the central makes loans to the

locals, and in a number of provinces those provincial centrals are supervised under federal legislation.

The Cooperative Credit Associations Act which is administered by our department governs the activities of provincial centrals in four of the provinces and also a federally incorporated institution which in turn serves the provincial centrals. But that is as far as federal involvement in the credit union movement is concerned.

In most of the provinces there is a type of guarantee fund which is intended to give some kind of support and guarantee to the local unions.

Senator WALKER: Would you name the four provinces?

Mr. HUMPHRYS: British Columbia, Saskatchewan, Manitoba and Ontario.

Senator GROSART: Mr. Humphrys, is it not true that many of these caisse populaires or credit unions deposit very substantial funds with trust companies and banks at the present time? I am now speaking of the provincial centrals of the caisse populaires. Is it not going to be a question of wisdom for them to make individual deposits for their branches so that they will get for each one the \$20,000 insurance?

Mr. HUMPHRYS: I think there are two points there, senator. First, as Mr. Scott reminds me, much of that deposit is used for clearing purposes, because many of the credit unions give chequing facilities to their members and they maintain large clearing accounts with banks to get access to the clearing facilities. It would be pretty difficult to split such an account up and still have it serve its purpose. Secondly, I think a provincial central, or any financial institution of any sophistication at all, would be able to form its own opinion as to whether its deposits were in a safe place or not. It would operate on that basis rather than merely trying to split its accounts up. If it had doubts about the safety of the particular institution holding its deposits, it would probably move them elsewhere rather than split them up.

Senator GROSART: Some very sophisticated investors have been found wrong in the last few years.

The ACTING CHAIRMAN: Are there any further questions? If there are no further questions, do you wish to proceed with the bill section by section?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Shall section 1 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 2—that is the interpretation section and includes the discussion we have had with respect to the interpretation of the word “deposits”. Shall section 2 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 3, constitution of the corporation as an agent of Her Majesty—shall section 3 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 4 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 5 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 6 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 7 carry—that deals with the authorized capital.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 8—shall section 8 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 9 defines federal institutions—shall section 9 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 10?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 11 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 12 deals with powers of directors and by-laws—shall section 12 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 13 is the insurance section whereby the deposits are insured up to \$20,000. Shall section 13 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 14?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 15?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 16?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 17?

Senator ASELTINE: I do not think it is necessary to go through the bill further clause by clause. I move the bill be reported.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Very well. Shall the preamble carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall the title carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The Committee adjourned.



First Session—Twenty-seventh Parliament

1966-1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 36

Complete Proceedings on Bill C-204,

intituled:

“An Act to provide for the establishment of
a Canadian Film Development Corporation”.

THURSDAY, MARCH 2nd, 1967

WITNESSES:

Department of the Secretary of State: The Honourable Judy LaMarsh,
Secretary of State.

Council of Canadian Film Organizations: John Howe, President.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Kinley	Reid
Bourget	Lang	Roebuck
Burchill	Leonard	Smith (<i>Queens-</i>
Choquette	Macdonald (<i>Cape Breton</i>)	<i>Shelburne</i>)
Cook	Macdonald (<i>Brantford</i>)	Thorvaldson
Croll	Macnaughton	Vaillancourt
Davis	McCutcheon	Vien
Dessureault	McDonald	Walker
Farris	McLean	White
Fergusson	Molson	Willis—(49)
Flynn		

Ex officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, February 8, 1967:

"Pursuant to the Order of the Day, the Honourable Senator Deschatelets, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill C-204, intituled: "An Act to provide for the establishment of a Canadian Film Development Corporation", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Deschatelets, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, March 2nd, 1967.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Beaubien (*Provencher*), Benidickson, Blois, Burchill, Haig, Irvine, Isnor, Kinley, Leonard, Macdonald (*Brantford*), Macnaughton, Thorvaldson and White. (16)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.
Bill C-204, "An Act to provide for the establishment of a Canadian Film Development Corporation", was read and considered.

The following witnesses were heard:

Department of the Secretary of State:

The Honourable Judy LaMarsh, Secretary of State.

Council of Canadian Film Organizations:

John Howe, President.

On Motion of the Honourable Senator Macnaughton it was *Resolved* to report the said Bill without amendment.

At 10.45 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, March 2nd, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill C-204, intituled: "An Act to provide for the establishment of a Canadian Film Development Corporation", has in obedience to the order of reference of February 8th, 1967, examined the said Bill and now report the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, March 2, 1967.

The Standing Committee on Banking and Commerce to which was referred Bill C-204, to provide for the establishment of a Canadian Film Development Corporation, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: I call the meeting to order. We have before us this morning for consideration Bill C-204. May I have the usual motion that the proceedings be reported?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Honourable senators, we have the Secretary of State appearing before us today, and in accordance with our usual practice I will ask her to make a general statement on the purposes of the bill.

The Honourable Judy LaMarsh, Secretary of State: Thank you very much, Mr. Chairman. This is the first time I have appeared before a committee of the Senate, and I am very happy to have this opportunity of coming before such an august body and telling you something of the Government's intentions concerning the development of a domestic film industry. I know from reading your debates that already some questions have arisen.

Perhaps at the outset I might deal with some of the points raised in the debate in the Senate. I notice on the question of awards Senator O'Leary (*Carleton*) had already expressed a reservation about making awards as are referred to in section 10(1)(c) of the bill.

The senator's impression apparently was that these awards were intended to go to people for the writing of scripts, as though I was going to be receiving an award from the Canada Council for a story, and I myself would receive the award for a script. But you will note in the wording of the bill that these awards are designed to recognize outstanding accomplishments in the production of Canadian feature films. It is our intention that the awards be confined to the finished production, in a sense, something like the academy awards in the United States. In the brief time this was spoken of in the house we have a new guild created in Canada, and there is some thought that, in the future at least, they themselves may be prepared to make guild awards.

This is not a terribly important part of the legislation, but it was thought of at least as a beginning, that the bill should be flexible enough to permit the Government to make awards for films as they are being produced, to provide an incentive to Canadian producers for a good all round film, and to consider the various ways in which the Government might undertake to nourish and support the growth of the feature film production.

When considering the various ways in which the Government might undertake to nourish and support the growth of feature film production, we took particular note of the practice of European countries. Films by native producers are eligible for financial support as a recognition of their intrinsic value and of the degree of public support they enjoy at the box office. We concluded that nothing comparable could be provided in Canada, but we were convinced that some form of monetary recognition of superior achievement could contribute to insure continuity of film production which is so essential to building a strong industry. It is the case that a producer will often tie up whatever funds he has access to in the film he has completed. He may, therefore, find himself obliged to wait some considerable time after the film has gone into distribution before the returns are sufficient to make it possible for him to undertake the making of his next film.

The kind of award that is contemplated in this bill would be at once a recognition of Canadian motion pictures that are especially meritorious and also afford an incentive for their producers to go on to a new film project.

However, as I say, the bill is permissive in this respect. It will be entirely within the competence of the board of directors of the Corporation in the matter of awards and, indeed, in all matters, to determine whether and to what extent the authorized means should be employed to accomplish the object of the legislation.

There was another reservation which I had expressed in the House of Commons.

THE CHAIRMAN: Paragraph (a) of subsection 1 of section 10 gives you added flexibility in that you can invest in the film business?

Hon. Miss LAMARSH: Yes.

THE CHAIRMAN: Or you can loan money to those who are producing?

Hon. Miss LAMARSH: We tried, Mr. Chairman, to make it as flexible as possible. This is one of the things that was discussed very many times with Mr. Philip Terry, the counterpart in England, and discussions of the interdepartmental committee with the chairman of the former film commission resulted in a decision of the Government to make the bill as flexible as we could, because there is no industry here yet. In each country there are some differences, so we hope to be able to make it flexible enough to take care of any differences that arise in this country. There is no government body, of course, in the United States.

THE CHAIRMAN: No, but I just wanted to point out that section 10 provides for investment as well as loans.

Senator THORVALDSON: Mr. Chairman, in regard to (a) I take it that when you see a good production coming along by a certain company, and that company says, "Will you help us to finance such a production," your idea is to assist rather than to finance the company generally?

Hon. Miss LAMARSH: Yes. There is no investment in company A or company B; the investment is in the product.

Senator THORVALDSON: And the type of investment referred to in paragraph (a) would be that you really invest in a specific film?

Hon. Miss LAMARSH: That is right.

Senator THORVALDSON: Then I notice that you have the right to share in the proceedings of the film.

Hon. Miss LAMARSH: Yes, in the profits. Let us hope there will be some.

Senator THORVALDSON: The bill says "proceedings".

Hon. Miss LAMARSH: Yes.

THE CHAIRMAN: "Proceedings" must mean after the return of capital cost of doing the film.

Senator THORVALDSON: Yes.

Hon. Miss LAMARSH: One of the questions that was raised in the other house and in the Senate was the question of the film commissioner. There was considerable concern about whether he would be on this board, and that the board would become an adjunct of the National Film Board. There was some worry about having him there. But I should like to say that it should be remembered that the Government film commissioner, is the principal adviser to the Government in film matters, and it was felt that he should logically be the most knowledgeable man ordinarily in the film business in Canada and therefore have some voice in determining the policy of this new agency.

There was a question whether he should become chairman. In the House of Commons, as I said, it was never that intention. We anticipate that it is entirely within reason that there might be from time to time a production undertaken between the National Film Board and the Canadian Film Development Corporation of a full length feature film picture employing some of the funds appropriated for their programming by Parliament. It is even possible that there might be a joint co-production between the C.B.C. and the National Film Board. In fact, they are doing that in connection with two films at the present time. We do think that neither the C.B.C. nor the National Film Board should be restricted from making feature films. But from time to time as feature films have been produced by the National Film Board there has been some complaint, and recently from a labour source, about their making feature films. We do not think this is in conflict with this new program to support and develop the film industry.

There has been somewhat less co-ordination between the federal agencies in the past than we would like to see. Hence, the Director of the Canada Council, the President of the C.B.C., and the Government Film Commissioner are, by statute, members of the board of the National Arts Centre. We hope presently to bring forward new legislation concerning the National Museums, and in this instance again, it is planned to include on the board the Director of the Canada Council.

Then there was some discussion in the Senate, Mr. Chairman, on the sort of person who should set up the Corporation. The view seemed to be that it should be run by a pretty hard-headed businessman, and I heartily endorse this view. Ten million dollars is not a large sum of money and if not used judiciously it will evaporate pretty quickly. We want to make sure we have something which will be put up to establish an industry and keep it going.

We think that in Canada there is already a range of talent sufficient to support such an industry. We think they will be of high artistic standard as well. There is no reason why they would not be so.

We are no less conscious of the importance of distribution of the films in which the corporation will invest. In the first place, if a film is no good, we would hope that it would be something that the board would turn down. However, I am told that in this business no one really knows whether a film is going to be any good until it is in the can; and while a film is being produced, or before it is produced, that is the critical time when people need money.

In a sense, it is like any other investment that the private investor makes in the case of industry. You have to take something of a gamble, you have to have a hunch; but you have to base it on your expert knowledge, as far as you can, of the industry in question.

We expect to have for the use of the board and its advisory councils some experts who will be able to make as educated a guess as can be made, at least as to whether a film should be made or not.

Once the film is produced, it could be the best film in the world but if it stays in the can and no one sees it, it is not going to produce an industry for us or

very much return to the maker or to private investors or even much of a return to the actors and other talented people who made it. Therefore the question of distribution is very critical and distribution agreements are the toughest part of this whole industry so far as Canadians are concerned.

They are something beyond just a matter of distribution. As you will appreciate, in this country the film has to be shown in movie houses which are privately owned. In most cases they are owned by United States corporations and in at least one case by a British corporation.

Outside of this country there are different arrangements which obtain. In the United States it is very much the same situation as we have here. In many other countries, for example in Italy, there is direct Government concern in movie houses.

We have to see that some sort of agreement is made for wide distribution, because our domestic market could never support an industry of that sort.

Also, in that distribution, there is some promotion of films. If you think for a moment, you will realize that every feature film that comes into Canada has already had the benefit of very extensive promotion in the country of origin and perhaps in the big markets in the United States; so it already comes partly pre-sold to Canadian viewers.

In the case of a first-rate film, such as the "Luck of Ginger Coffey" you can have a distribution agreement but if it is not promoted by the distributor, it is stuck into a movie house and put on for a day or two, and no one knows it is on. It is not likely that there will be a large attendance or that there will be much critical praise of it, because the critics will not hear about it.

It is very interesting that some of the best of Canadian films heretofore produced have almost died in Canadian movie houses, until they went away and got a bit of reputation in the United States or elsewhere and then came back and Canadians, having heard of the film, went to see it.

We are very concerned to see that proper distribution agreements are made and that promotion of each film will be assured. There is no reason for us just to support, encourage an industry that is wholly inventory, a Canadian industry to make films just to make films. If a product is not good enough to go out into the world and compete in other countries, I do not think we have any business being in the support of feature films.

The only way we can tell is to look in the past and see some first-rate films in this country, both short and long, which have won international prizes and which have brought fame for the people who made them.

These people are ready and eager to make new films in Canada. In the next few years they will have that opportunity to see whether or not they can compete in the United States. One of the reasons they have not been able to do that up to the present is the fact that there has been no government assistance in Canada. As you know, the United States and Canada are two of the developed countries in the world which do not give this assistance, up to now.

Someone suggested to me in Washington a week or two ago that it is high time that Americans started giving assistance for the arts in this way, but whether or not this will come to pass there I do not know. We know that it is a high risk industry. Sometimes people hit it big and sometimes it goes to pieces and they never seem to get anywhere. All kinds of things can happen in the case of a film to be produced, which may take a matter of six or eight weeks. The leading star may break a leg or get a black eye. The camera man may be shut out of the country. All kinds of things can happen, so you have a difficult time staying within the schedule.

The costs are high and it is very necessary that the man producing the film should know something about his business and be able to project his costs in a realistic way when he comes before the board to ask for assistance.

There is going to be lots of competition in Canada, I think. In the four years which I have been in the cabinet I have never had a piece of legislation which has attracted so much interest from the people in the field. I sometimes feel that, once this bill passes—if the Senate approves it—and it receives royal assent, there will be a queue outside the parliament buildings of people who have projects and want to get on with them. In fact, I had letters from people all over the place who say: "I have a story which will make a good film. Where do I get the money to produce it?" I am not going to be in the business, nor is the board in the business, of buying scripts. I want that to be clearly understood. People coming in will come in with packages, everything is thought out; it is not just an idea that they have got that they think they can get us to make a film or to use promotionally.

The CHAIRMAN: Before you invest any money or before you make a loan, somebody in your department, whose advice you are going to get, has to rate the possibilities of such a script and story for him, and what attractions it might have? I should think that might happen.

Hon. Miss LAMARSH: Mr. Chairman, there would be a number of different ways in which this would come about. One way would be that the more experienced producers would come in. This is the optimum case. This is a story which he has converted into a shooting script; at least the stars and the leading players are contracted for, and a distribution agreement already arranged. He will need some money at one point or another in his production, to meet his share of the cost. There will be a lot of things short of this.

It is contemplated it will also include the case of the man who comes in and says: "I have a first-rate story idea that is worth producing in a film—" something unpublished or a book of some kind—"but I do not have the money to produce a shooting script." We could give assistance for that purpose, because sometimes that is the most difficult part to get over, the \$25,000 or \$30,000 needed to convert a book into a script.

I have been told by knowledgeable people in the field that there are different places where money may be needed. There is front money, there is end money. There is need of money to go into the development to begin with.

Recently I was told by a Canadian, who is now in the movie business in the United States, that he felt that the greatest use which would be made of this money would not be as an investment as such but rather a guarantee. He points out that very often you can have your project all arranged, to sell it to companies A, B and C, and you can have the distribution and everything ready; but their contract is to buy it when the film is in the can, when it is all completed. The producer may not have enough money to get that far. He might be able to raise some money. He goes to the bank and the bank says: "That is all right, we will not, however, discount the agreement you have to get the \$500,000 when you have this thing in the can; we will not lend money to you on that basis, as how do we know you will ever get it in the can, how do we know you will ever in fact complete it?"

As you appreciate, completing a film is not the same as completing a bridge for a municipality. In the case of the bridge, if the contractor who is building it is not able to continue it, the municipality is in a position to call in someone else to take it over. However, in the case of completing a film, this is partly an artistic exercise and depends on the quality of the people. You cannot always bring in a new director or a new star and produce the same quality of film.

This Canadian told me that he thought that we might be called upon from time to time to provide completion guarantees, in effect to bond the producer to a bank or other finance house which would lend the money. Then, if the film were produced in fact, according to the contemplated arrangement there would be no call at all for the government fund to put up any money.

If, on the other hand, the film were not completed, the fund might be called upon to step in and find another director, or whatever was necessary to get it completed.

Well, we are not sure where the heaviest demand will be for the money, and that is why we have tried to make the fund as flexible as possible.

Senator LEONARD: Madam Minister, on that point, is there power in the bill to guarantee?

Hon. Miss LAMARSH: There is power to do almost anything.

Senator LEONARD: Where would be the power to guarantee?

Hon. Miss LAMARSH: This, I think, can be done either as a loan or an investment.

Senator LEONARD: Then you are using the word not in its strict legal sense of a guarantee being some obligation.

Hon. Miss LAMARSH: It is to be used, Senator, I think in the widest possible sense.

Senator LEONARD: There is no specific power in the bill, is there? I have not seen it.

Hon. Miss LAMARSH: I think this can be included under the investment.

Senator MACNAUGHTON: Section 10(1)(b): make loans.

Senator LEONARD: But it is not a guarantee of somebody else's loan?

The CHAIRMAN: You could agree to make a loan in certain events.

Hon. Miss LAMARSH: If necessary.

The CHAIRMAN: In certain events. One of those events would be if they were running out of money part way through the job. I do not think they need the word "guarantee". It may be that, if the corporation were going to lean on the bank for the money, the bank would say that it would not see the specific word "guarantee" in there.

Senator DESCHATELLETS: Mr. Chairman, I suppose that at the beginning the Corporation will deal mostly with Canadian producers who have already shown certain success in this field of feature films. That would be the case right at the start, I suppose.

Hon. Miss LAMARSH: I must have seen about thirty prospective applicants. Not all of them have made feature films before.

Senator DESCHATELLETS: I do not think that we have more than a dozen well qualified producers of feature films in Canada. We might reach the number of twenty-five, but this bill will, to a certain extent, help the Board right at the beginning. Some members or senators have had the impression that right at the beginning the Board is going to be flooded with requests of all kinds. But I assume that the board is going to deal at the beginning mostly with people who have shown that they can produce films.

Hon. Miss LAMARSH: Well, senator, I think that they will be flooded, and it will be a little while before people understand the situation. I am sure that the board will get a lot of inquiries similar to those that I have already had from people writing in to say that they have written a story that will make a good film, and where do they go to get their money. Of course, there is not much problem dealing with that.

But the film producers of this country have been watching the process of this legislation very carefully and they are pretty good business men, most of them, or they would not have survived in this business. Most of them are also reasonably young, and it seems to me that most of the successful applicants, will be people who know their way around in this business.

There may be lots of applications from people who will not be successful because they do not understand yet the kind of arrangements they have to make before coming to the Corporation. There are many young moviemakers in Toronto and Montreal who think they can simply go out to a couple of basements and make a movie and that that is all there is to it and that they should be entitled to assistance. But that is not the case.

I suppose assistance might be contemplated for an "underground" feature film, but it would have a very difficult time getting over the necessity of having a distribution arrangement. I do not know exactly how these avant guard underground films are distributed, but I do not think very widely or in a recognized way.

The CHAIRMAN: I would say, Madame Minister, that neither citizenship nor residence is a required test. The tests appear in section 10(2), where it says that:

"The completed film will, in the judgment of the Corporation, have a significant Canadian creative, artistic and technical content . . .

And that:

Arrangements have been made to ensure that the copyright in the completed film will be beneficially owned by an individual resident in Canada . . .

And that the Corporation which is functioning is Canadian incorporated or provincially incorporated or a combination of both.

But that would not preclude an experienced organization from outside Canada coming in to Canada and setting up a Canadian organization.

Senator THORVALDSON: Is there a fairly well established film industry in Canada now, Miss LaMarsh? We are all familiar with Crawley Films and the Canadian Film Board, but are there any other corporations such as those? I do not hear of others. Are there other corporations established in the business of making films now?

Hon. Miss LAMARSH: I am not sure that they are corporations, but there are a number of well-known Canadian producers. Incidentally, Crawley Films may be the best-known corporation partly because it is so close to Parliament. But I discussed this question with about fifty people at a luncheon I attended on the west coast. They included not just producers but other people in the film industry.

I might say that there is a new guild which was established about a week ago, I think—I am informed that it was the day after this bill went through the House of Commons. You will notice that there is a spokesman from the guild here, and he is watching pretty closely what is going on. I am told that there are something like forty film-producing companies in Canada at the present time. They do not all make features, but ten of them do, and this is a \$14 million business already.

I do not know if I mentioned this before, but the \$10 million which is used here will, it has been conservatively estimated, if I may use that word, excite another \$20 to \$30 million. In other words, it is not contemplated that this be any more than 25 or 33 per cent of the investment that will be stimulated just as a result of this amount.

The CHAIRMAN: I do not suppose it would be fair to say that this \$10 million is a crutch.

Hon. Miss LAMARSH: It is rather the seed money.

Senator MACNAUGHTON: It is the beginning.

The CHAIRMAN: Yes.

Senator THORVALDSON: In regard to the film industry generally in Canada, will it not be a handicap that some of the main theatre chains are owned by Hollywood producers and American producers? Consequently, will there not be continuing difficulty getting distribution of Canadian films in Canada? I wonder how that will be got over.

Hon. Miss LAMARSH: The distribution arrangements have to be made with those theatre owners in the same way as they have to by producers from any other country wanting to show their films in Canada. There is always room for a good film in any theatre. There is no room for a lot of poor films, because obviously people stop going to the particular theatre thereafter.

It has already been demonstrated, chiefly by Mr. Crawley, that you can hammer out fairly attractive distribution agreements.

As this legislation has developed, the members of the interdepartmental committee have had conversations with distributors in Canada and they have watched very carefully as well. They are aware that we have not tried the quota system, as is used elsewhere but that we are anticipating cooperation from them, and we have heard nothing to suggest that we will not get co-operation from the distributors.

Now, it is contemplated that the distribution agreements for an individual property will be made by the person who owns the property, but the Corporation will stand ready at any time to assist in any way it can to get good distribution.

The CHAIRMAN: You referred to the quota system. How does that work? Do they have that in England?

Hon. Miss LAMARSH: Yes, they do. In actual figures it means that 35 per cent of the films shown in an individual house must be made in the United Kingdom.

Senator DESCHATELETS: Are we going to study the bill clause by clause, or are we still asking questions?

The CHAIRMAN: I am afraid we moved in on the reading of the statement by the minister.

Hon. Miss LAMARSH: Actually I have concluded what I wanted to say. I know my former colleague dealt very accurately with the bill when it was before the Senate.

Senator DESCHATELETS: I read your speech.

Senator MACNAUGHTON: May I ask a few naive questions? You used the word "guild". How exactly is that word used in this context?

Hon. Miss LAMARSH: It is used in the old English sense of a guild of artists or artisans collected together in a professional society just as you have the bar associations or other professional associations. It is not used much nowadays in Canada—we do not say a guild of lawyers. In this case it is simply a fact that people connected with the film industry are getting together into a guild, but the guild does not call itself that, it calls itself the Council of Canadian Film Organizations.

The CHAIRMAN: Yes, the name is the Council of Canadian Film Organizations, and Mr. Howe is the president.

Senator MACNAUGHTON: In essence it is an association of what?

Hon. Miss LAMARSH: An association of companies making films in Canada.

Mr. John Howe, President, Council of Canadian Film Organizations: Would you like me to answer that?

The CHAIRMAN: As I have told you Mr. Howe is the President of the Council of Canadian Film Organizations.

Mr. HOWE: This council is a completely bicultural and bilingual organization which came together as an organizing committee of eight separate organizations. There is the A.M.P.P.L.C., which is the Association of Motion Picture Producers and Laboratories of Canada. Then there is the A.P.F.Q., which is L'Association des Producteurs des Films du Quebec; A.P.C., which is L'Association Professionnelle des Cinéastes; the A.A.A., L'Association des Auteurs et des Artists ACTRA, the Association of Canadian Television and Radio Artists; the C.S.C., Canadian Society of Cinematographers; the D.G.C., Directors Guild of Canada; and the S.F.M., which is the Society of Filmmakers. In that collection of representatives, the council has eight directors, one nominated from each of these organizations. We meet to discuss matters of mutual concern, and this bill is our matter of greatest concern at the moment. When we meet each of the directors has one vote, and every resolution is passed by the council as a unanimous resolution, and the eight organizations represent, we feel, practically every facet and every endeavour of film-making in Canada.

Senator MACNAUGHTON: Am I correct in believing that you would propose to be of use as an advisory council to any corporation set up under this bill?

Mr. HOWE: We have submitted to the minister that we are indeed the advisory group set forth in clause 14 of this bill.

Senator MACNAUGHTON: You would hope to be so considered by the officials of the corporation?

Mr. HOWE: We are prepared to do everything in our power to make it work. We think this is an excellent bill and we are extremely grateful to the minister for having brought it before the house. We are prepared to do everything we can to make this organization work.

Senator MACNAUGHTON: Could I ask the minister if the Corporation when set up will consider having studios and equipment or will they engage in that kind of activity at all?

Hon. Miss LAMARSH: No, what we would have is an office and since these expenses all come out of the \$10 million, the less we spend on trappings the better. We are not going to produce films ourselves.

Senator MACNAUGHTON: Obviously it would be working very closely with the C.B.C. and the National Film Board.

Hon. Miss LAMARSH: With the Board itself, not of necessity; but with individuals, maybe. Individuals may have a co-production agreement with the board or the C.B.C., but aside from the fact that the Government Film Commissioner is to be a member of the board, there won't be any other board level.

Senator MACNAUGHTON: It won't be likely that either of those organizations will approach this new organization for loans or for investment in their activities?

Hon. Miss LAMARSH: This film development fund is not for use by the film board or by the C.B.C. in making feature films.

The CHAIRMAN: If the C.B.C. is to be a producer of films, it will have to finance itself out of its own pocket?

Hon. Miss LAMARSH: If the C.B.C. makes its own films there is no reason for them to approach us.

The CHAIRMAN: They can use their own funds?

Hon. Miss LAMARSH: Yes.

Senator MACNAUGHTON: What other countries have similar setups?

Hon. Miss LAMARSH: Mr. Spencer of the film board is one of the people who has had continuity since the resignation of the Government Film Commissioner last year, and he tells me this bill really has a mixture of what is used in the United Kingdom and in some European countries including France and Italy.

The CHAIRMAN: Did you hear the answer, senator?

Senator MACNAUGHTON: I think I heard the answer.

Hon. Miss LAMARSH: I'm sorry, perhaps I should repeat that. Both France and Italy have such legislation as well as the United Kingdom. This is a sort of an amalgam of their legislation. It is not directly the same as the legislation in any one of these countries.

Senator LEONARD: I am interested in the relationship between the Corporation and the Government or between the Corporation and the minister to whom the Corporation reports. I notice at the top of page 4, clause 10, subclause (4), it says:

(4) The Corporation shall, to the greatest possible extent consistent with the performance of its duties under this Act, consult and co-operate with departments, branches and agencies of the Government of Canada and of the governments of the provinces having duties related to, or having aims or objects related to those of the Corporation.

Is there any similar section in any legislation connected with the C.B.C.?

The CHAIRMAN: That includes the C.B.C.

Senator LEONARD: Is the C.B.C. to consult?

Hon. Miss LAMARSH: I don't think so.

Senator LEONARD: This brings me to my next question. Will there be a greater control or collaboration between the minister to whom this corporation reports than there is between the Government represented by the minister and the C.B.C. which at present is a very independent organization?

Hon. Miss LAMARSH: Well, this organization is going to be independent too in a sense, but I would hope there would be a closer relationship between the Secretary of State and this organization than exists between the Secretary of State and the C.B.C. As you know, the C.B.C. is going through a rather trying time at the moment.

Senator LEONARD: As you know, there have been a number of instances recently where there has been considerable criticism of the C.B.C., and this includes those in the Senate. That is why the question ran through my mind as to what will be the relationship between the Government as represented by the minister, and having regard to the opinions of Parliament, or the majority of the members of Parliament, and the actual work of the corporation?

Hon. Miss LAMARSH: This legislation is designed to create a corporation which will be like the Canada Council, one not responsive to Government direction. In other words, it seems to me quite improper to set up a corporation with regard to which the Government could say to the board, "Give Mr. 'A's' application favourable treatment, and make a loan or invest in his film." This is not going to produce decent films, but it may produce a Liberal or Conservative feature film about the party or the party leadership, or something else, for propaganda purposes.

It is not intended that there be any directions of any kind flowing from the Government to the Corporation. It will be left to make its independent judgments, just as the Canada Council does.

The CHAIRMAN: Except for anything that might arise as a result of the Government's report on the Corporation to Parliament, and the action Parliament might take on it.

Hon. Miss LAMARSH: Exactly. Or if we found, for instance, the Corporation was making entirely nudist films, was spending its entire budget on nudist films or something of this kind, we might decide it needed some sort of direction.

The CHAIRMAN: That the percentage is too high.

Hon. Miss LAMARSH: You cannot ever be sure on that. Who is to decide whether the percentage is too high?

Senator MACNAUGHTON: I have one question I would like to ask, I hope without wearying honourable senators. I happen to be the Chairman of the Roosevelt Campobello International Park in which there has been a 35 per cent increase in tourists last year alone, and the President of the United States came and the Prime Minister. This year the Queen Mother is coming.

Due to the great interest of Americans in this park, small as it is, and the increasing interest of Canadians, it had occurred to us it might be wise to make a suggestion to someone in the Government to produce a film which would involve part of the story of Roosevelt and the visits of these prominent people.

Obviously, the object is not only to promote the park, but also to create better relations and publicize it with our American friends, which in turn brings economic returns to the district, and all the rest of it. It seems to me a good, interesting short story could be made out of that. Would that be the type of suggestion which could be sent into the Corporation?

Hon. Miss LAMARSH: No, this is for commercial feature films. That would come under either the National Film Board or, more likely, private development or the Travel Bureau.

Senator DESCHATELETS: In clause 4, subsection (2), I would like to know what is the meaning of the word "honorarium."

Hon. Miss LAMARSH: This was an amendment added in the House of Commons. The Government's intention, as expressed in the original draft bill, was to have, on the Canada Council model, an executive director who would be the operating officer, and a board with a chairman, just as Mr. Martineau is the Chairman of the Canada Council, and he is part-time unpaid. But in the House of Commons the question was raised as to whether or not you might have a situation where, especially in starting it off, you wanted to have the chairman substantially the operating officer, in which case you would want to pay him. The executive director would be more in the position of a secretary. So they suggested we should be able to, and that we should have this flexibility. I agreed, as long as it was permissive, there was no harm in it. This is the amendment, that he may receive an honorarium, that he may be paid some remuneration.

Senator DESCHATELETS: I think he should be, because the success of this board would depend largely, especially at the beginning, on a highly qualified chairman, and since it would be, at least at the start, a full-time job, I would personally think we should pay as much as we can.

The CHAIRMAN: It is discretionary in the bill.

Senator DESCHATELETS: But an honorarium, to my mind, is more in the nature of a dollar a year man.

Hon. Miss LAMARSH: That is the initial purpose, but it will depend on who is appointed as to whether it is \$1 a year. As I understand it, in law an honorarium can be any sum of money.

Senator DESCHATELETS: The wording would permit the Governor in Council to determine what they think would be a fair salary?

Miss LAMARSH: We have to pay what the market demands.

The CHAIRMAN: "Honorarium" just means what it says. It is not any fixed amount and is not a salary, but such amount as in the discretion of the Governor in Council he may decide to pay this person. He has no right in the matter.

Hon. Miss LAMARSH: Except that he will not come to work for us unless we pay him well.

The CHAIRMAN: We have not put that provision in the bill, that once he is appointed he must work!

Senator ISNOR: Mr. Chairman, it has been a pleasure having the young lady appear before us.

Hon. Miss LAMARSH: This is probably the only place in the land where I would be called a young lady, but I thank you for it, senator.

Senator ISNOR: Before we go on with the bill, perhaps Miss LaMarsh would enlarge with regard to her answer to Senator Macnaughton, I think it was, concerning the National Film Board and its association or connection with this corporation. She stated there would be no direct connection, or no connection whatsoever. I think—and I think Senator Leonard has the same thought—that there should be a very close connection between the three boards—namely, the C.B.C., the National Film Board and this particular board—if we are going to get the best out of every one of the three. Would you enlarge upon your answer that there would be no connection?

Hon. Miss LAMARSH: There is a connection, in that the Film Commissioner will be on this board, but the Film Board itself will not have any other connection. The Film Commissioner is the government officer on films, and we feel that his expertise and his day-by-day knowledge should be available to the Board, but this is intended to be of assistance to the private sector.

The other two, the C.B.C. and the Film Board, in a sense are governmental, and the industry has been greatly concerned that the Film Board not run this new development corporation. They are quite different kinds of animals, the Film Board and this particular contemplated corporation. I have tried in the last year or so, with some success, to provide opportunities for heads of various commercial agencies to come together. There is no sort of council of cultural agencies in Canada, and we do this by way of an informal dinner, which I do not think has ever happened before. But the office of the Secretary of State now encompasses responsibility for 15 or 16 agencies, most of which are headed up by individuals holding a rank equivalent to that of deputy minister, and all of which have a degree of independence dissimilar from departmental line responsibilities. There has not been, and there is not yet any sort of formal way in which the heads of those agencies can meet frequently. I mean, the Film Board, the C.B.C., the Canada Council, the Art Gallery, the Museum, and so on—these agencies which will be brushing against one another all the time. I have not really thought seriously about giving it a formal connection, but perhaps it is worthwhile. In the past I think we have relied on people who are at the tops of these various agencies, all being very people with a community of interest, running into one another from time to time, and consulting with one another, but there has been no governmental authority for that.

The CHAIRMAN: I notice that you have provided yourself with some authority. Section 13 reads:

The Corporation may, subject to the approval of the Minister, make by-laws for the regulation of its proceedings and generally for the conduct and management of its activities.

Hon. Miss LAMARSH: Yes, but it is not intended that this be an internal management thing at all. We will lay down the policy.

The CHAIRMAN: I would expect that you will not only lay down the policy but will be watching from time to time to see that they are following it.

Senator ISNOR: Mr. Chairman, I am going to suggest to the Minister—before I make my suggestion I should say that I remember when the National Film

Board was organized we at that time looked upon it as being part of the C.B.C., so far as the development of the C.B.C. and its interests were concerned. I would think that these four groups—that is, including the Canada Council—should be working more closely together if we are going to accomplish the purpose intended for each group. I think you might give this idea of yours a second look—that is, as to the possibility of amalgamating the three boards.

Hon. Miss LAMARSH: And create a sort of council?

Senator ISNOR: Yes.

Hon. Miss LAMARSH: That is a thought that is well worthwhile considering. I will be happy to look into it.

Senator ISNOR: I think that that is what Senator Leonard had in mind.

Senator LEONARD: I was interested in ascertaining the Minister's views with regard to the relationship between the government as represented by herself, and the Corporation, because I thought section 10(4) was not in some of the other acts, such as the C.B.C. Act.

The CHAIRMAN: No, it may require reciprocal legislation. All subsection 4 says is that, the Corporation being Barkis, Barkis is willing.

Senator LEONARD: I think this calls upon the Corporation to do something more than make an annual report.

The CHAIRMAN: That is right. Are there any other questions?

Senator LEONARD: I am not going to ask any further questions of the Minister, but I wonder if Mr. Howe had completed what he had to say. Did he have a watching brief, or did—

The CHAIRMAN: I think Mr. Howe said that his organization supported this legislation 100 per cent, and wanted it passed as quickly as possible. Having said that I think he has said everything he could possibly say.

Senator LEONARD: Perhaps so, but I would like to ask a question.

The CHAIRMAN: Very well.

Senator LEONARD: I did not understand what he had in mind with respect to the Advisory Group mentioned in section 14. Did he have in mind that his Council would like to have one representative on the Advisory Group?

Mr. HOWE: No, sir. We feel that we will substantially form that Advisory Group, because we have already been collecting all the people—

Senator LEONARD: I would like to register an objection to that. From what you told us, Mr. Howe, it would seem that the members of your group would have a majority position, and that does not seem to me to be the kind of Advisory Group that this Corporation should have. There is also in the section an indication that the Advisory Group should be representative not only of the industry proper but should include other qualified persons. However, that is in the hands of the Minister and of the Government. I just wanted to register my views on it.

The CHAIRMAN: I take it that there are no unions represented in your organization, Mr. Howe.

Mr. HOWE: Yes, there are two.

Hon. Miss LAMARSH: May I suggest, gentlemen, that the people for whom Mr. Howe speaks are those connected with the film industry of Canada. There are very few not included in it. There is no question but that the Advisory Group will be drawn from his constituents, as it were.

The CHAIRMAN: But that is different from having the Council—

Hon. Miss LAMARSH: Even if it was the Council, it would be wearing the hat of the Advisory Group, and not the hat of the Council, when it advises.

Senator LEONARD: That is right.

Senator THORVALDSON: May I ask a question in regard to section 14? It reads:

The Minister may, on the recommendation of the Corporation, appoint an Advisory Group—

Now, is the recommendation there going to be for the minister to appoint the personnel, or will it be for the Corporation to appoint the personnel, of the Advisory Group?

Hon. Miss LAMARSH: The Corporation and the Council will probably suggest to me a number of people who should be appointed as an advisory group. This is what usually happens when you set up an advisory group like this. Their advice is usually accepted.

Senator THORVALDSON: That is, as to the personnel?

Hon. Miss LAMARSH: Yes.

The CHAIRMAN: I take it that the personnel would be a group of individuals or corporations, but not necessarily one organization as an organization?

Hon. Miss LAMARSH: Yes, for instance the Council does not include the distributors, I think.

Mr. Howe: Not as yet, but there is provision in our constitution for allowing their entry. If I may, Mr. Chairman, I would like to speak to the Senator's objection to our group.

The CHAIRMAN: I did not understand that he was objecting to your group. He was objecting to its employment in a particular way.

Senator LEONARD: My objection is to the principle of whether or not the advisory group under the act should be a private organization set up by a particular group.

The CHAIRMAN: And which can only function under its own regulations?

Senator LEONARD: It would be the same as saying that under the Bank Act the advisory group to the Minister of Finance would be the Bankers' Association.

Hon. Miss LAMARSH: God forbid.

Senator MACNAUGHTON: Are not the qualifying words in section 14 "broadly representative"? Those are the words used, and they give unlimited scope, really.

The CHAIRMAN: Yes. It was only the fact that Mr. Howe had given some indication in reference to section 14 that this question was provoked. I think the section is broad enough to do what we think should be done and in the way it should be done. I notice too that you may include in this group other qualified persons. If you exhaust the persons—

Senator LEONARD: It could be somebody who pays to sit and watch feature films.

Hon. Miss LAMARSH: Those people, I hope, will be on the advisory group as well. For instance, on that advisory group you might very well have critics. They might be included in it.

Senator LEONARD: Give the game back to the fans.

Senator THORVALDSON: I take it that you are not in agreement with Mr. Howe's suggestion that the advisory group be selected entirely from his people?

The CHAIRMAN: I did not gather that.

Senator THORVALDSON: That is what I gathered from his remarks.

Hon. Miss LAMARSH: It will not be entirely from his people, because he does not represent the distributors, for instance.

The CHAIRMAN: Or other qualified persons.

Hon. Miss LAMARSH: But, there is no question that most of the advisory group will be his people.

Senator THORVALDSON: May I ask Mr. Howe whether his council includes exhibitors, distributors and unions?

Mr. HOWE: It includes unions. We do not at this moment include exhibitors and distributors. We are working towards that. We do indeed want to expand the council.

Senator THORVALDSON: What particular unions are associated with your council?

Mr. HOWE: ACTRA and l'Union des Auteurs et Artistes—both unions.

Senator LEONARD: What about this union—I do not know the name of it—which is composed of all the actors—

Mr. HOWE: That is ACTRA

Senator LEONARD: Is it in your organization?

Mr. HOWE: Yes, it is, indeed, senator.

The CHAIRMAN: Are there any other questions? Is it the feeling of the committee that in view of the very full discussion we have had that we need to go through the bill clause by clause? If not, is it agreed that I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee adjourned.



First Session—Twenty-seventh Parliament

1966-67

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 37

Complete Proceedings on Bill C-268,
intituled: "An Act to amend the Excise Tax Act and
the Old Age Security Act".

FRIDAY, MARCH 10th, 1967

WITNESSES:

Department of Finance: The Honourable Mitchell Sharp, Minister; F. R. Irwin, Director, Tax Policy Division.

Department of National Health and Welfare: R. H. Parkinson, Director, Old Age Security.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Isnor	Reid
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Leonard	Thorvaldson
Cook	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Croll	Macdonald (<i>Brantford</i>)	Vien
Dessureault	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(47)
Flynn	Molson	

Ex officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Friday, March 10, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Bourque, for second reading of the Bill C-268, intituled: "An Act to amend the Excise Tax Act and the Old Age Security Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourque, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

FRIDAY, March 10th, 1967.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2.00 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Beaubien (*Provencher*), Choquette, Connolly (*Ottawa West*), Cook, Fergusson, Flynn, Gershaw, Irvine, Kinley, McCutcheon, McDonald, Power, Rattenbury, Smith (*Queens-Shelburne*) and Thorvaldson. (17)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Cook it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-268.

Bill C-268, "An Act to amend the Excise Tax Act and the Old Age Security Act", was read and considered.

The following witnesses were heard:

Department of Finance:

The Honourable Mitchell Sharp, Minister.

F. R. Irwin, Director of Taxation.

On Motion of the Honourable Senator Smith (*Queens-Shelburne*) it was *Resolved* to print as part of the record of this day, the Tables on pages 11333 and 11335 of the House of Commons *Hansard* of December 19th, 1966.

On Motion of the Honourable Senator Grosart it was *Resolved* to report the said Bill without amendment.

At 2.50 p.m. the Committee adjourned to the call of the Chairman.

Attest:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

FRIDAY, March 10th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill C-268, intituled: "An Act to amend the Excise Tax Act and the Old Age Security Act", has in obedience to the order of reference of March 10th, 1967, examined the said bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Friday, March 10, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill C-268, to amend the Excise Tax Act and the Old Age Security Act, met this day at 2 p.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Honourable senators, we have Bill C-268 before us, and at the moment we have a number of witnesses from various departments. We have Mr. F. R. Irwin, Director of the Tax Policy Division, Department of Finance; Mr. A. P. Mills, who is in charge of Sales Tax, Department of National Revenue. We have Mr. R. H. Parkinson, who is the Director of Old Age Security in the Department of National Health and Welfare and we have Mr. J. I. Clark from the Research Division of the Department of National Health and Welfare.

I am expecting that we may even have the Minister of Finance himself. I have my fingers crossed, but I am expecting that we may have him as well. Failing that, we may have some other person to deal with the situation.

This is not the sort of bill for which we need any kind of statement beforehand. This bill has been well debated. I would suggest that we just start in with questions, and of the array of witnesses we have here we can select the person, or he can volunteer, to answer the questions.

Senator McCUTCHEON: Mr. Chairman, I am probably very stupid about this, but I am looking at page 11334 of the House of Commons *Hansard* for December 19, the first sentence commencing at the top of the right-hand column:

In introducing the guaranteed income supplement we are adding \$280 million a year to our cash outflow.

Can someone explain to me that statement in the light of Table 2 which is on page 11335.

The CHAIRMAN: Mr. Irwin, are you ready to deal with this question?

Mr. F. R. Irwin, Director, Tax Policy Division, Department of Finance: Mr. Chairman, I will provide whatever information I can. The statement of the minister is, as the senator has mentioned, that he is introducing tax measures to increase revenues by \$280 million. He explained that since Parliament had decided that it was going to increase expenditures by \$280 million, he felt it necessary to increase revenues by an according amount.

Senator McCUTCHEON: But he says the whole of that \$280 million is the guaranteed income supplement.

Mr. IRWIN: I believe, sir, he said that it was necessary to increase revenues by \$280 million.

Senator McCUTCHEON: I am just reading the statement he made:

In introducing the guaranteed income supplement we are adding \$280 million a year to our cash outflow.

Now, I have not been able to reconcile that with Table 2.

Mr. IRWIN: I see that the minister has just come into the room.

The CHAIRMAN: Mr. Minister, you are just in time.

Senator McCUTCHEON: Mr. Minister, Mr. Irwin has the reference to which I am referring. In your budget statement of December 19, just before you spell out the new old age security taxes you make this statement:

In introducing the guaranteed income supplement we are adding \$280 million a year to our cash outflow.

Now, I look at Table 2 on the next page, and I wonder if you can reconcile that statement with the figures that appear on Table 2?

The Honourable Mitchell Sharp, Minister of Finance: Yes, The G.I.S. payments under column 5—

Senator McCUTCHEON: It is headed column 4.

Hon. Mr. SHARP: I am referring to the fifth column, G.I.S. payments. You will notice that in January 1, in the year 1967-68, which is the coming fiscal year, we added \$286 million for that reason alone.

Senator McCUTCHEON: Then I do not understand Table 1. I assume that these are not fiscal years; these are calendar years, I take it.

Hon. Mr. SHARP: No, these are fiscal years, all of them.

Senator McCUTCHEON: Fiscal years do not start on January 1.

Hon. Mr. SHARP: Those refer to minimum eligible age, January 1, 1967. This is pointing out how reducing the age of eligibility affects the payments as well. Then the fiscal year to which the payments relate is the second heading. But this is the minimum eligible age and it is put in here to help the members see the effect upon the old age security pension payments of the reducing age.

Senator McCUTCHEON: Yes. That is reflected in the column headed 3.

Hon. Mr. SHARP: Old age security pension payments. Then you will find in the fourth column, as you call it, the G.I.S. payments add that much more: guaranteed income supplement of \$286 million.

Senator McCUTCHEON: You say it will be \$70 million for the balance of this current fiscal year.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, I wonder if I may raise a question having nothing to do with the particular question and answer? In order to make our record understandable for those who might be interested in reading it, I wonder if we could have the tables referred to incorporated in the *Minutes of Proceedings*?

Hon. SENATORS: Agreed.

The CHAIRMAN: The tables referred to in the discussion, that is Table 1 on page 11333 and Table 2 on page 11334 of the House of Commons *Hansard* for December 19, will be put into the record of the proceedings at this point.

TABLE I
OPERATION OF OLD AGE SECURITY FUND, FISCAL YEARS ENDED
MARCH 31, 1952 TO MARCH 31, 1967
(\$ millions)

Year	Pension Payments	Tax Revenues			Total	Annual Surplus (+) or Deficit (-)
		Sales	Corporation Income	Individual Income		
1951-52 ⁽¹⁾	76	24	2	0.1	26	- 50 ⁽³⁾
1952-53.....	323	142	37	45	224	- 99 ⁽⁴⁾
1953-54.....	339	147	56	91	294	- 46 ⁽³⁾
1954-55.....	353	143	46	101	290	- 63 ⁽³⁾
1955-56.....	366	160	53	102	315	- 50 ⁽³⁾
1956-57.....	379	179	67	125	371	- 8 ⁽³⁾
1957-58.....	474	176	61	135	372	-102 ⁽³⁾
1958-59.....	559	174	55	146	375	-184 ⁽³⁾
1959-60.....	575	270	91	186	547	- 28 ⁽⁵⁾
1960-61.....	592	270	104	229	603	+ 11
1961-62.....	625	285	100	259	644	+ 29
1962-63.....	734	302	115	274	691	- 43 ⁽⁵⁾
1963-64.....	808	332	116	303	751	- 58 ⁽⁵⁾
1964-65.....	885	383	145	432	960	+ 75
1965-66.....	927	522	152	495	1,169	+242
1966-67 ⁽²⁾	1,031	561	153	552	1,266	+235

⁽¹⁾Program commenced January 1952.

⁽²⁾Estimated (excluding the guaranteed income supplement and tax change).

⁽³⁾Provided for by budgetary expenditure.

⁽⁴⁾Written off against reserve for losses on realization of assets.

⁽⁵⁾Financed by loan which has been repaid out of subsequent surpluses shown in this table.

TABLE 2

ESTIMATED POSITION OF O.A.S. FUND, 1965-66 TO 1971-72

(\$ millions)

Minimum Eligible Age	Fiscal Year	O.A.S. Pension Payments	Revenue from Present Taxes	Difference Col. (2) - Col. (1)	G.I.S. ⁽¹⁾ Payments	Difference Col. (3) - Col. (4)	Revenue ⁽²⁾ from 1966 Change	Combined Revenues Col. (2) + Col. (6)	Combined Payments Col. (1) + Col. (4)	Annual Surplus or Deficit Col. (7) - Col. (8)	Balance in account at end of year ⁽³⁾
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Jan. 1, 1966 Age 69.....	1965-66	927	1,169	+242	—	+242	—	1,169	927	+242	+217
Jan. 1, 1967 Age 68.....	1966-67	1,031	1,266	+235	70	+165	9	1,275	1,101	+174	+391
Jan. 1, 1968 Age 67.....	1967-68	1,146	1,381	+235	286	— 51	137	1,518	1,432	+ 86	+477
Jan. 1, 1969 Age 66.....	1968-69	1,296	1,427	+131	318	-187	147	1,574	1,614	— 40	+437
Jan. 1, 1970 Age 65.....	1969-70	1,464	1,505	+ 41	346	-305	157	1,662	1,810	-148	+289
Age 65.....	1970-71	1,619	1,590	— 29	367	-396	168	1,758	1,986	-228	+ 61
Age 65.....	1971-72	1,689	1,687	— 2	363	-365	180	1,867	2,052	-185	-124

⁽¹⁾ Represents estimated payments in respect of each fiscal year.⁽²⁾ Assumes new tax deduction tables can be put into effect on Feb. 1, 1967.⁽³⁾ Deficit of \$25 million at March 31, 1965.

Hon. Mr. SHARP: My adviser has pointed out to me that, although the G.I.S. payments being incurred during the present fiscal year are stated here at \$70 million, actually that amount of cash will not move into the hands of the recipients by March 31. That will be an accrued liability.

Senator McCUTCHEON: Yes. In making the statement of G.I.S. payments, what consideration was given to possible reductions in liabilities in the Canada Assistance Plan and other welfare old age assistance supplements?

Hon. Mr. SHARP: The G.I.S. payments are not affected by the Canada Pension Plan, but on the other hand the Canada Assistance Plan payments are reduced to some extent by the fact that these supplements are now paid to some of the most needy who might otherwise be receiving payments under the Canada Assistance Plan, but the G.I.S payments are not affected by the operation of the Canada Assistance Plan.

Senator McCUTCHEON: I appreciate that, but in your statement you said that the revenue that would be derived under Bill C-268 is necessary because the cash flow has increased. I appreciate that the G.I.S. payments have not increased but surely the cash flow will not increase by the amount of the G.I.S. payments.

Hon. Mr. SHARP: In the Canada Assistance Plan payments we pay 50 per cent, and that would be somewhat affected by the G.I.S. payments. This would not be of such an order of magnitude as to have made a difference between imposing these taxes or not imposing them. The increase in the ceiling under the Old Age Security Act was a doubling of the ceiling—that was the increase in the taxes we imposed. We considered that this was an appropriate adjustment and having in mind the general magnitude of the requirements the remainder had to be raised. We could not have got along with either of these alone. In imposing taxes one can never calculate exactly a balance. One has either to impose a tax of one per cent or no tax at all. A tax of one-half of one per cent would be a great nuisance and one would therefore try to avoid it unless one had to. The revenues and requirements are never exactly in balance as one can see even by looking at the general position presented in the budget. There are always differences which arise from later developments in the economy or because expenditures are more or less than had been originally estimated. It is impossible to strike an exact balance, and I think for the purposes that these taxes were imposed to cover we imposed roughly enough taxes to produce the cash required for this purpose, and that was our objective.

Senator McCUTCHEON: What consideration, if any, has been given to eliminating the so-called O.A.S. fund?

Hon. Mr. SHARP: I said in the House of Commons in reply to a similar question that I thought that the fund was obsolete and that I hoped in due course it would be eliminated, and I gather that Mr. Carter shares my view.

Senator McCUTCHEON: Looking again at the table in the right-hand column headed 10—elimination of that fund would certainly clarify in the minds of the public what you are attempting to do by this act, I think.

Hon. Mr. SHARP: Yes, I feel that the existence of the fund has not added to the public understanding of what is happening in the government accounts. It has been suggested to me both in the house and elsewhere that somehow I had hidden away vast sums of money that I could call on to supply the cash that was needed, but in fact all of this money, even though an accounting is called for, is all in the Consolidated Revenue Fund and was available to the Government to meet its expenditures. The accounting is required by the law, and that is why I put part of the taxes into the fund in order to discharge my responsibility under the law of maintaining a rough balance in this account, and the balance went into the general revenues. I have been criticized for this on the grounds that I did

not need this money in order to pay the pensions because there was money in the fund for this purpose. There was an accounting which showed a credit balance in that account, but from the point of view of the Government in finding money to pay out the cash to the old age pension recipients, I had either to tax it or to borrow it. I had no alternative. There was no hidden reserve that I could call on for the purpose.

Senator GROSART: Mr. Minister, why did you say you had either to tax or borrow when this table we are referring to seems on the face of it to show that without the increase in the sales tax your fund would be completely in balance until the year 1971?

The CHAIRMAN: But this was only a paper accounting.

Hon. Mr. SHARP: This is the essence of the situation which I think should be clarified. I gather it is the view of Senator McCutcheon as well as being my own view that a fund of this kind is now of doubtful value.

Senator McCUTCHEON: I would go further than that and say it is positively dangerous.

Hon. Mr. SHARP: It is certainly confusing. Now supposing there was no such fund in existence and I had been faced with the task of finding the money to pay this G.I.S. supplement, where would I have found it?

Senator GROSART: I think the answer to that is that this table shows that you already had it and you did not have to find it because it was already there.

Hon. Mr. SHARP: It was not there; that is an accounting of the difference between payments to old age pensioners and the amount to put into the fund on a bookkeeping basis. There is no cash there.

Senator GROSART: But this represents money which the public contributed for this specific purpose at that particular time, and there was a surplus of the money that the public had contributed to take care of the requirements of the old age security fund. There was a surplus there. To carry on with your analogy of the Consolidated Revenue Fund, I suggest that if at some given time you had a surplus in the Consolidated Revenue Fund you would look at this and consider it when considering your taxes for the following year.

Hon. Mr. SHARP: If I may refer you to the record, to the table appearing on page 11333, Table 1. There you will find that if you take the position since this fund has been in existence there has been a deficit. Now if you want to approach it from that point of view, I will accept it. This illustrates the point made by Senator McCutcheon that it is not only confusing but it may be dangerous. I happened to be an advisor to the committee that established the old age pension plan, and the original purpose intended was to establish relationship between the money set aside for this purpose and the payments, and it was thought that the public would be influenced by the fact that the money needed for this purpose had to be raised. If you look at Table 1 you will find that this principle was honoured more in the breach than in the observance. For nine years it did not provide enough money. How would you get the money? We got it out of the Consolidated Revenue Fund.

Senator GROSART: At some point or other Parliament said we are going to write off this deficit. Now I can fully understand that you may not like this, but I agree with Senator McCutcheon that these basic purposes should not be segregated. There is no more sense in segregating these than there is in segregating family allowances or segregating the funds we are putting by from a special tax to pay the necessary requirements of Expo. I agree with this. But Parliament, in its wisdom, has said, "As of this date, here is the surplus in this fund." Parliament decided to write off the \$602 million, or whatever it was. It is true, if you

want to go back beyond that decision of Parliament, you can say you have an overall deficit of \$235 million, but as of the time the Government decided to impose this particular tax—I am not speaking of the requirements of the Government—you made it so clear that the two taxes we are speaking of were required for the purposes of the income supplement. I am suggesting to you, in view of the surplus that was there and in view of your own projections up to 1972, the additional money was not required. I would further suggest you cannot have it both ways. You cannot say, "We need this money for Old Age Security purposes, but we will not put the money in that fund."

Hon. Mr. SHARP: Mr. Chairman, first, may I suggest that I never at any time said anything like that. I find myself going over the same ground as I did in the debate in the house. I made three very clear statements in the presentation of the supplementary budget. First, I said we will need \$280 million of cash to meet these payments. For this purpose I intend to raise two taxes: one of them under the Old Age Security Act in order to keep that fund in balance, as I am required to do as Minister of Finance; and the other to raise the additional cash. That is the only statement that I have made and it is, I believe, a true statement, that from the point of view of the Government we had to raise \$280 million, approximately, in cash to meet these payments. Otherwise I should have had to borrow part of it, and I did not believe then, and I do not believe now, it would be wise, in all the circumstances, to borrow money for this purpose.

I can assure you that other Government expenditures are rising quite quickly enough for us to avoid any surplus, and our problem is going to be to keep our deficit within reasonable relationship to the needs of the economy. I was not faced with any concern about raising any more money than was needed for the general purposes of the Government. I have never misrepresented this. I have always said we needed cash, and we were raising it for that purpose, because I wanted to have a neutral effect upon the economy; and that is what I strived to do, to offset the amount of cash that was being spent on old age pensioners by an equal withdrawal from the system.

I have never made any other statement, and I would like this very clearly on the record, Mr. Chairman, because I am not suggesting the Old Age Pension fund did not have a bookkeeping surplus in it. However, I do want to point out in that connection that if you look at table 2, by the payment of the guaranteed income supplement the fund goes immediately into deficit. If you want to look at this in terms of the fund, these new funds were acquired for this purpose immediately. That is why I felt I have the responsibility, as Minister of Finance, to replenish that fund even where I have very grave doubts about the wisdom of continuing it. This is the law, and I am carrying out my responsibility under the law. It goes into deficit immediately if we do not put on any other taxes in the year 1967-68.

Senator McCUTCHEON: Yes, if no other taxes were put on.

Hon. Mr. SHARP: Yes, if no other taxes were put on.

Senator GROSART: I did not intend to suggest you had misrepresented this in any way, because I read very carefully what you have said. It was suggested in the other place.

The CHAIRMAN: Though, senator, you did say in the Senate this was putting a tax on under the guise it was needed. That would appear to suggest misrepresentation.

Senator GROSART: Not at all, and, I want to make that clear. The minister made his position very clear in terms of cash. This does not make it impossible there was a guise in respect to the statement that this was the direct and necessary consequence—necessary consequence—and I might say immediate—

and these were the terms that were used—of the decision to institute the G.I.S. This is a very different thing from saying the minister misrepresented. I do not say that, and it is quite clear that he did not.

Nevertheless, I still think it is possible to say that a higher level of taxation was imposed than was necessary: (a) to keep the fund in balance; and, (b) even to fully replenish the Consolidated Revenue Fund—because we have no figures before us to show what the savings will be under the Canada Assistance plan and under the Old Age Assistance Act.

The Senate committee made a very high estimate. They may be wrong—and, as I said in the Senate today, the two sets of circumstances are not exactly similar but they are comparable—but taking their suggestion, which was that this G.I.S. would be paid at age 65, whereas it is now being paid at age 68, the Senate committee said, "The first cost to be looked at is the \$225 million, in straight multiplication, and we estimate the savings will bring this down to \$100 million."

The CHAIRMAN: In new money required. They did not say "savings."

Senator GROSART: The savings will bring the \$225 million down to \$100 million.

The CHAIRMAN: The new money required.

Senator GROSART: But will bring the cost down to \$100 million.

Senator BEAUBIEN (*Bedford*): There is a big difference between "cost" and "savings."

Senator GROSART: As I remember—and I put it on the record this morning—their first figure was \$225 million, and they said there will be savings, under the Canada Assistance Act, under the plan, and they suggested others, and they said, "This will bring down the cost to the Consolidated Revenue Fund"—they were not talking about this one—"to \$100 million from \$225 million." I have to admit immediately they were thinking in terms of 560,000 and not the 900,000 that will probably come under it. There were other questions, but my arithmetic suggests the difference would only add about \$30 million to that \$100 million figure.

Would any of your officials be able to give us the complete breakdown of the \$286 million? What proportion of it will go to those who will get the full supplement. What proportion will go to those who will get a partial supplement? What is the arithmetic of this figure of \$286 million we are asked to accept?

Hon. Mr. SHARP: Perhaps I should say this to begin with. The estimates of the cost of this program were worked over for a period of many weeks. Indeed, I have never known any program that was more difficult to implement than this guaranteed income supplement. I hope I am not guilty of lese majesty if I criticize the Senate committee, but I think I would be justified in saying that they considerably underestimated the difficulty of their own concept.

It became clear, as we began working through the implications of any guaranteed income plan, that, in the first place, the plan could not be implemented in as simple a form as was suggested in that report, and, secondly, as we made it more realistic the costs mounted very rapidly. I can assure you that these estimates of the cost of the supplement itself are not, so far as I can understand from what my officials tell me, exaggerated in any way. Indeed, this was not the top of the range.

As to savings, there will be some in the Canada Assistance Plan but the savings will take quite some time to realize, and they will not be particularly substantial. Moreover, in looking at the Canada Assistance Plan as such, the costs, in my judgment, will probably continue to rise. If it happens that we have to raise a little more revenue for the purposes of paying the supplements then the savings you have after the calculation of the net cost will be useful in

meeting the expense of other parts of our welfare program. They will not enable me to reduce taxes. I can assure you of that.

Senator GROSART: In other words, part of this money could quite possibly go to pay for other welfare programs?

Hon. Mr. SHARP: No, the savings that are effected in other welfare plans as a result of the extension of this one can be used for other forms of welfare payments.

Senator GROSART: In other words, the difference—

The CHAIRMAN: No, senator, to the extent that you have to pay out less on some other plans because of this supplement you will then have money available for other welfare objects.

Hon. Mr. SHARP: That is right.

Senator GROSART: I agree with that, but we are still dealing with the imposition of a tax and a particular bill, and I am asking the Minister, if I may, if he is now saying that it is possible that some part of the money that will be raised by these two amendments might conceivably be used for some other purpose.

The CHAIRMAN: The minister has not said that, senator.

Senator GROSART: But I am asking the minister if that is what will happen.

Hon. Mr. SHARP: I will put it in a form that I find acceptable. As a result of the guaranteed income supplement plan being fully financed then there may be savings elsewhere. Those savings will certainly be taken up in other extensions of welfare services, under the Canada Assistance Plan or otherwise. Therefore, I do not think it was inappropriate at all for me to raise an amount equal to the forecast of the guaranteed income supplement.

Senator GROSART: I am not arguing that matter, Mr. Minister. I take it, then, that you are saying that the Senate committee's rough estimates were away out?

Hon. Mr. SHARP: Away out, yes.

The CHAIRMAN: Are there any other questions?

Senator McCutcheon: I think the minister might consider extending the terms of the Deposit Insurance Corporation Act to the Old Age Security Fund so that we would not have this larcenous—

The CHAIRMAN: Would you couple with that, senator, a request that he also constitute that fund a bank?

Are there any other questions?

Hon. Mr. SHARP: We might even outdo the Mercantile Bank and pay more than $4\frac{1}{2}$ per cent on deposits.

Senator GROSART: Mr. Minister, would it be possible to make available some of the arithmetic of this figure of \$286,000 rising to \$353,000.

Hon. Mr. SHARP: Well, I have no objection particularly, but I do not have it with me. I do not know whether the departmental officials have it.

Mr. R. H. Parkinson, director of Old Age Security: No. It is difficult to tell until we get the applications in and find out which of the people are going to be paid the full \$30, or something else.

The CHAIRMAN: Let us put it in this way: When that information comes in and you are able to give a statement of the kind requested you will send it to the chairman of this committee and he will see that Senators McCutcheon and Grosart, at least, receive copies, or perhaps at some time make it available to the committee.

Hon. Mr. SHARP: I understand that some senators still have friends in the House of Commons who could be persuaded to put a question on the order paper.

Senator GROEART: This goes beyond the discussion we have had. I think it is most important to know what proportion of this money goes to the two groups, and what possible savings there might be. My understanding is that your applications stand now at about 600,000.

Mr. PARKINSON: As of yesterday, 678,000 people had applied.

Senator Grosart: This again is away above the estimate of the Senate committee. That includes both groups, the full and the partial?

Mr. PARKINSON: Yes.

Senator GROSART: The figure is 678,000 so far.

Mr. CLARK: The estimate of the Senate committee is 560,000 persons of age 65 and over, and here we are talking about persons of age 68 and over.

Senator GROSART: Yes, that is so.

The CHAIRMAN: Is it the wish of the committee that I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966-1967

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Acting Chairman*

No. 38

Complete Proceedings on Bill C-277,

intituled: "An Act to authorize the making of certain fiscal payments to provinces, to authorize the entry into tax collection agreements with provinces, and to amend the Established Programs (interim Arrangements) Act".

WEDNESDAY, MARCH 15th, 1967

WITNESSES:

Department of Finance: A. W. Johnson, Assistant Deputy Minister;
Department of the Secretary of State: Robin Ross, Office of the Under-Secretary of State.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Isnor	Reid
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	Macnaughton	Vien
Farris	McCutcheon	Walker
Fergusson	McDonald	White
Flynn	Molson	Willis—(47)

Ex officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 15, 1967:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Hayden, for second reading of the Bill C-277, intituled: "An Act to authorize the making of certain fiscal payments to provinces, to authorize the entry into tax collection agreements with provinces, and to amend the Established Programs (Interim Arrangements) Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Hayden, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 15th, 1967.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 8.00 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Connolly (*Ottawa West*), Croll, Dessureault, Fergusson, Flynn, Gouin, Irvine, Isnor, Kinley, Leonard, Macdonald (*Cape Breton*), McDonald, O'Leary (*Carleton*), Pearson, Smith (*Queens-Shelburne*), Thorvaldson, Vaillancourt and Willis. (20)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion duly put it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-277.

Bill C-277, "Federal-Provincial Fiscal Arrangements Act, 1967", was read and considered.

The following witnesses were heard:

Department of Finance:

A.W. Johnson, Assistant Deputy Minister.

Department of the Secretary of State:

Robin Ross, Office of the Under-Secretary of State.

On Motion of the Honourable Senator Thorvaldson it was *Resolved* to report the said Bill without amendment.

At 9.20 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

STANDING COMMITTEE

REPORT OF THE COMMITTEE

THURSDAY, March 16th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill C-277, intituled: "An Act to authorize the making of certain fiscal payments to provinces, to authorize the entry into tax collection agreements with provinces, and to amend the Established Programs (Interim Arrangements) Act", has in obedience to the order of reference of March 15th, 1967, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, March 15, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill C-277, to authorize the making of certain fiscal payments to provinces, to authorize the entry into tax collection agreements with provinces, and to amend the Established Programs (Interim Arrangements) Act.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Honourable senators, I call the meeting to order. We have before us Bill C-277.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: As you know, the administration of this bill as and when it becomes law will fall into two different departments, the Department of the Secretary of State, as to Part II, and the Department of Finance in relation to the other sections of the bill, dealing particularly with equalization payments and stabilization payments. Therefore we have as witnesses Mr. Robin Ross from the office of the Under Secretary of State; Mr. A. W. Johnson, Assistant Deputy Minister of Finance; Mr. E. Gallant, Director of Federal-Provincial Relations, and Mr. J. Garner of the same division. With this bank of witnesses we should be able to get the answers to any questions you may wish to ask. I have also seen to it that we are equipped with a blackboard and chalk.

Senator PEARSON: Are the two last named gentlemen holding their positions permanently on an annual basis?

The CHAIRMAN: Perhaps, Mr. Gallant and Mr. Garner you will describe your positions for Senator Pearson.

Mr. GALLANT: I am a member of the Federal-Provincial Relations Division; I am the director of that division.

Mr. GARNER: I am an officer in the same division.

The CHAIRMAN: I would suggest that possibly we should deal first with the matter of equalization payments and stabilization payments. Would that be agreeable to you, Senator Connolly? Mr. Johnson, this is your field. If you feel that some general explanation would assist our consideration, would you give it now, please? Questions may come at any time.

Mr. A. W. Johnson, Assistant Deputy Minister, Department of Finance: The equalization formula that is contained in the bill provides for the equalization of all provincial revenues to the national average level. The formula for achieving this is essentially this. We would determine the annual provincial tax rate for the whole of the country—let us say, for example, the provincial

sales taxes—and we would apply that provincial tax rate to the tax base of each province. The tax base, in the case of sales tax, would be a combination of retail sales and expenditures on construction materials. We would apply the average provincial tax rate to the tax base in each province and determine the yield that would be derived in that province from that average tax rate.

The CHAIRMAN: On the basis of?

Mr. JOHNSON: Of the national average tax rate, sir—not the tax rate of the province itself, but the average provincial tax rate across the country.

Senator THORVALDSON: If a province had not a sales tax, it would still qualify?

Mr. JOHNSON: That is right. In the Province of Alberta, the average provincial tax rate would be applied to that province's tax base.

Senator THORVALDSON: The same with Manitoba?

Mr. JOHNSON: Yes.

Senator LEONARD: Is that average a weighted average?

Mr. JOHNSON: It is.

Senator KINLEY: What about succession duties?

Mr. JOHNSON: The proportion of the Estates Tax or succession duties which the provinces themselves collect, or have collected by the federal Government and remitted to them, is included in the equalization formula. The provinces now are getting 75 per cent of the estates tax, that amount of the federal estates tax, and if the province imposes succession duties that same principle would apply.

Senator KINLEY: How do you deal with Alberta?

Mr. JOHNSON: You are referring to which proposal?

Senator KINLEY: They do not assess estates tax.

The CHAIRMAN: They talked about it. They have not passed a law.

Mr. JOHNSON: They have not passed a law. The present situation in Alberta is this: the Government of Canada imposes an estates tax in Alberta, and then, under this statute, each province, including Alberta, which does not impose succession duties of its own, receives 75 per cent of what is collected from that province. What you are referring to, of course, is their proposal to rebate a certain proportion of this to certain residents of Alberta.

The CHAIRMAN: Continue, Mr. Johnson.

Mr. JOHNSON: If I may continue with the example of a single tax—the sales tax, for example—after having applied the average tax rate, the national average provincial sales tax rate, to the tax base of every province, we would then apply that average tax rate to the tax base for all provinces combined, and we would convert both to a per capita basis. If the per capita yield from this average provincial sales tax in any province were to be less than the average per capita return for the country as a whole, that province would be entitled to equalization in respect of that tax.

What we would do, you will see, sir, is to take all provincial revenue sources, make such a calculation for each revenue source, and add the results up, the pluses and minuses.

In some provinces, those close to the national average, you will find that some of the revenue sources yield less than the national average, while others yield more. We would take an algebraic summation of the results for each revenue source and thus determine whether that province's total revenue yields are less than the national average.

That is the essence of the formula. I hope I have made it clear.

Senator ISNOR: How many provinces fall below that average?

Mr. JOHNSON: The Atlantic provinces, Quebec and Manitoba.

Senator ISNOR: Would you name the Atlantic provinces?

Mr. JOHNSON: Newfoundland, Nova Scotia, New Brunswick, Prince Edward Island.

The CHAIRMAN: The only mistake you made there, Mr. Johnson, was in the enumeration you made. You would have pleased the senator more if you had named Nova Scotia first.

Mr. JOHNSON: I realized that as soon as I had said it, but unfortunately I could not back up.

Senator ISNOR: I set that trap for you.

Senator THORVALDSON: When did Saskatchewan get out of this category of underprivileged provinces?

Mr. JOHNSON: As you know, there are adjustment arrangements for the five-year period that is covered by this bill, in respect of equalization. Saskatchewan does not qualify under these equalization arrangements for any equalization payment.

However, because Saskatchewan will this year be receiving, I think it is \$33 million, and because the drop from \$33 million to zero would be certainly a hardship to that province if I may look at Senator McDonald (Moosomin)—the proposal in the bill is that there would be a gradual reduction over the five-year period from \$33 million to zero. This assumes, I must quickly add, in respect of what I said, "down to zero," that the Province of Saskatchewan would not, over this period, fall into a position where she did qualify. This is possible. If there were a series of crop failures or less oil activity, for example, she may very well qualify. So when I say "down to zero" I mean as things presently stand.

Senator McDONALD: Is not this true of any province, any province that does not qualify now could qualify?

Mr. JOHNSON: Yes sir. The formula is quite automatic, senator, for any province. If the tax base of any province rises above the national average, that province automatically will cease to qualify for an equalization payment—and the reverse is true.

The CHAIRMAN: If you are looking for it, it is in section 9.

Senator KINLEY: Do not most of the provinces show a surplus?

Mr. JOHNSON: In their published accounts, the provinces follow a variety of accounting systems. I will be forgiven, I know, if I do not comment on their accounting systems. May I say only that, if one compares the ordinary or current revenues with the ordinary or current expenditures in any province, you will find that all provinces have a surplus. That is, on ordinary or current account. The provinces differ in their practices, however, as to what proportion of their capital expenditures is charged to their current or their operating revenues. Therefore, I would have to answer almost province by province to say what their surplus or deficit would be, if they were all to charge all of their capital expenditures against revenue.

Senator KINLEY: Provinces that have no debts are in good shape.

Mr. JOHNSON: We make our calculations on the basis of the aggregate revenues as reported by the Dominion Bureau of Statistics. I see the point of your question, senator. It would be unfair for the Department of Finance to take into account only those revenues that a province happened to report, using its own accounting system. So we provide here for taking into account those revenues as reported by the D.B.S. in a standard publication of provincial revenues. That is a standard system and it is well-known and accepted by the provinces.

The CHAIRMAN: You do not necessarily use a formula that the particular province may have for doing its bookkeeping.

Mr. JOHNSON: That is right, sir.

Senator LEONARD: Mr. Chairman, may I ask, particularly with respect to the revenue base for the personal income tax, is that made up from the aggregate of personal income tax returns, or how is it calculated?

Mr. JOHNSON: The revenue base in the case of personal income tax is made up from returns that are filed with the Department of National Revenue. In this case, as you are in effect pointing out, we have a standard tax law, to which we can make reference. The difficulty arises where you have different tax bases as, for example, where you have different exemptions in respect of provincial sales taxes.

Senator LEONARD: Corporation taxes are treated the same way?

Mr. JOHNSON: Yes sir.

Senator PEARSON: You have different rates of tax in the provinces, too.

Mr. JOHNSON: That is right, but what we would take into account in this formula would be the actual income tax collections of the provinces. So we would take into account not only the so-called standard rate, the 28 per cent, but any additional income tax levies that the provinces impose.

The CHAIRMAN: And you would adjust the exemptions to the sum collected over the period?

Mr. JOHNSON: Fortunately, in respect of income and corporation profits tax they are virtually uniform, so we do not have any problem of tax base there.

Senator ISNOR: Mr. Johnson, in the last provincial-federal conference that you had on this matter, was there general acceptance by the different provinces on the basis of this bill?

Mr. JOHNSON: May I answer that in two ways? I think it would be fair to say that the provinces generally agreed that this was a technically sound approach to equalization. There was disagreement, however, as to the application of the formula to the different revenues sources. These disagreements came, you will readily understand, sir, from the provinces which qualify for less equalization than they had hoped they would qualify for.

There was some argument as to the level of equalization; there was some argument as to whether municipal revenues should have been included. Those are essentially the differences, and they were raised by those provinces which did not get as much as they had hoped for. The other differences came from the provinces which did not get equalization and which were inclined to believe that the formula was too generous.

Senator FLYNN: Mr. Johnson, any formula is open to discussion, of course, but no particular formula can meet all the conditions of the various provinces. Would you say, however, that the equalization, stabilization and succession duty payments are aimed at enabling the provinces to give, generally, the same services in their proper fields of jurisdiction?

Mr. JOHNSON: Yes, sir. If I remember correctly what the Prime Minister and Mr. Sharp observed about the equalization formula, the objective was to ensure an adequate level of provincial public services across Canada.

Senator FLYNN: This has been so since the beginning of equalization payments, which goes back at least 20 years.

Mr. JOHNSON: This has been the objective of the equalization payments, yes.

Senator FLYNN: In those services, Mr Johnson, would you include education?

Mr. JOHNSON: To date, senator, there has been no effort in the equalization formula to direct the payments in respect of any particular function of government. These equalization payments—and I believe I am correctly reflecting what Mr. Sharp and the Prime Minister had to say about this—are designed to bring all provincial services to an adequate level.

Senator FLYNN: All? You would not exclude education, therefore?

Mr. JOHNSON: No, this would not exclude education. That is correct, sir. It was observed, however, that in addition to a general equalization formula which enabled all provinces to come to an adequate level, there might be occasions when the Government of Canada, whichever it might be, would feel that a particular public expenditure, or public activity administered by the provinces, enjoyed a marked priority in the national priorities. Under such circumstances, say Mr. Sharp and the Prime Minister, the Government of Canada would be justified in making special tax arrangements or fiscal arrangements on that account. And that is the principle that appears, sir, in respect of Part II of this bill.

Senator FLYNN: I am not questioning you, sir, so much in regard to this particular act or bill; I am just thinking of all the bills that we have had since we introduced equalization and stabilization payments some 20 years ago.

Mr. JOHNSON: Yes.

Senator FLYNN: Then, if education were not excluded in the idea of equalization and stabilization, would it be possible to find a formula which would at the same time take care of the needs of the provinces to meet their education requirements? In other words, would it be possible to have only one formula instead of the two we have here?

Mr. JOHNSON: With your permission, sir, let me refer to Part II. I will not attempt to deal with it in detail, because this is something you will want to talk to Mr. Ross about. The essence of the arrangements in Part II is a reduction of certain federal taxes to enable the provinces to take up that so-called tax room for the purpose of financing an even higher level of education expenditures than would be possible under the general equalization arrangements.

Now, if one were to do this alone, sir, it would mean that those provinces which are incurring singularly high expenditures in this field would, by virtue of the average tax yields, be less able to provide an optimum level of services than other provinces.

Again what I am about to say is not by reference only to this bill, because it has applied to hospitalization and to other national programs as you all know better than I. The essence of the arrangements is that where a high priority is accorded to a particular activity, the national average equalization can be augmented by other grants to the provinces enabling them to finance expenditures to the per capita level they choose rather than to the national average level. No general formula is capable of achieving that in respect of selected services.

The CHAIRMAN: Mr. Johnson, I see a difference between abatement of federal taxes so as to permit the province to levy directly, the federal authority to collect, and direct payment by the federal authority to the province. How would you classify those in relation to equalization and stabilization payments?

Mr. JOHNSON: The tax abatement system is, as you observe, sir, a tax transfer. In the shorthand that we in the Department of Finance are inclined to use, it is a tax transfer, whereas an equalization payment or any payment out of the treasury is a dollar transfer or a cheque transfer and has the same net effect on the federal budget and the provincial budget. But the difference, of course, is in who levies the taxes for the services concerned.

The CHAIRMAN: No. You have abatement, which is now, in this bill, proposed to be up to 28 per cent.

Mr. JOHNSON: Yes, sir.

The CHAIRMAN: That is a levy. The federal authority foregoes and the province moves in.

Mr. JOHNSON: Yes, sir.

The CHAIRMAN: Then you have the character of direct payment in equalization and stabilization.

Mr. JOHNSON: Yes.

The CHAIRMAN: That comes out of federal revenues levied federally, collected and received federally and expended federally.

Mr. JOHNSON: That is right, sir.

The CHAIRMAN: If you add the total on top of the 28 per cent, what do you get?

Mr. JOHNSON: A very large figure.

The CHAIRMAN: If you were doing it according to percentages, what would it add to the 28 per cent?

Mr. JOHNSON: The value of 28 points of individual income tax, on the basis of estimates for the current year, is \$1 billion approximately.

Senator THORVALDSON: For all the provinces?

Mr. JOHNSON: That is right, sir. It is \$1 billion. The value of the equalization payment for the forthcoming year—you want the arrangements provided for in this bill?

The CHAIRMAN: Yes.

Mr. JOHNSON: For the forthcoming year it is \$535 million.

The CHAIRMAN: The stabilization is included in that figure?

Mr. JOHNSON: There is no estimate for stabilization, sir. That would occur only in the event of an economic recession.

Senator CROLL: Is there anything in this bill to indicate that the money allocated for the purposes of education will not be used for digging ditches?

Mr. JOHNSON: There is nothing in the bill, sir, requiring the provinces to use for higher education the moneys they raise by imposing the four point individual income tax and the one point corporation tax for higher education. But I must qualify that immediately with the observation that the total amount of fiscal transfer from the federal Government is determined by the expenditures on universities and technical institutes in the province concerned, and this means, therefore, that the provinces themselves determine by the level of expenditures on higher education what the total federal fiscal transfer will be.

Senator CROLL: Then if the province makes a particular effort to increase its expenditures on a university you match that and you increase your contribution?

Mr. JOHNSON: That's right. This is automatic under that part of the bill.

Senator CROLL: That is the only hold you have on it?

Mr. JOHNSON: That is right, sir. There is nothing in this bill that directs the province or the educational institutions as to the use of the money.

Senator CROLL: Except the formula that you suggested.

Mr. JOHNSON: That is right.

Senator CROLL: One more question. You spoke a few minutes ago about priorities that might be imposed by the federal Government. I gather it was priorities or certain priorities of expenditures.

Mr. JOHNSON: Yes.

Senator CROLL: Can you give me an example of what you have in mind?

Mr. JOHNSON: If I may refer first of all to hospitalization, senator. The Parliament of Canada in 1958 decided that this public activity administered by the provinces was of such high priority that the Parliament of Canada was prepared to impose taxes for the purpose of making money available to the provinces to finance these activities. Similarly the Parliament of Canada is being asked in this bill to accord such a high priority to higher education but it would be prepared to appropriate funds and reduce its taxes—a combination of the two—for the purpose of alleviating the provinces' expenses in this field.

Senator CROLL: What provision is made for medicare?

Mr. JOHNSON: The Medical Care Act provides that the Parliament of Canada will be prepared to appropriate funds to make payments to those provinces which have got a medical care plan as provided for in that act. That is another priority that the Parliament of Canada has defined or prescribed for the nation as a whole.

The CHAIRMAN: Mr. Johnson how would you relate the 50 per cent of operating costs or \$15 per capita and the 4 per cent additional abatement?

Mr. JOHNSON: Would you like to answer that, Mr. Ross, since it is in your field.

Mr. Robin Ross, Office of the Under Secretary of State: I think what you are asking is how the total payment will be made?

The CHAIRMAN: So far as the provinces are concerned they will get either 50 per cent of the operating costs, or \$15 per capita, or 4 per cent abatement. What is the net result?

Mr. Ross: Well, sir, they get the higher of the \$15 per capita or the 50 per cent of operating costs of post-secondary institutions. The transfer is made to the province by means of four point of personal income tax and one point of corporation tax and associated equalization payments, and the federal Government may, in certain cases, depending on the value of the income tax, pay an additional cash payment known in the bill as an adjustment payment.

Senator LEONARD: Are there any cases where the four points of personal income tax or the one point of corporation tax amount to more than \$15 per capita?

Mr. JOHNSON: The figures presently available suggest that in all cases the 50 per cent or the \$15, whichever the case may be, would be more than the value of the tax transferred. However, I must qualify this by saying that the provinces themselves have had some difficulty in coming up with precise figures concerning expenditures for institutions of higher learning, and until we have had a year's experience with this bill, if it becomes law, I think I must add that qualification to my answer.

The CHAIRMAN: No matter what the \$15 per capita or the 50 per cent of the cost comes to the provinces will get the additional 4 per cent abatement of federal tax?

Mr. JOHNSON: That's right.

Senator LEONARD: In the case where the total operating costs of the universities are concerned, and you are prepared to grant 50 per cent as being the larger of the figures that enter into the calculation, is there any requirement that would prevent the province from giving nothing to one of the universities included in the computation?

Mr. Ross: No, sir. As Mr. Johnson said, the relation of this scheme to educational costs is that educational costs in the province for post-secondary education are the factors on which the amount of the federal contribution is

calculated. Once that amount has been determined and transferred to the provinces they can spend it whatever way they like. On the other hand there is this incentive to spend it on education, that the amount of transfers will depend upon their expenditures on education.

Senator LEONARD: But will it not increase anyway because the universities' operating costs will increase whether or not the money is given to them?

The CHAIRMAN: You are saying it will be given to them on the basis set up by the provincial authority?

Senator LEONARD: As I understand it, the amount given by the federal Government to the province has nothing to do with what the province gives to the universities.

Mr. ROSS: But their costs could only go up if they get the necessary support from the province.

Senator LEONARD: I am afraid they go up whether or not they get any money from the province.

Senator FLYNN: Mr. Chairman, as you know we are in effect trying to change the rate of federal tax. It is along that line that I would like to question the witness, if I may. Therefore, may I ask whether the abatement in favour of the provinces applies only in the field of personal income tax, corporation tax and succession duties?

Mr. JOHNSON: That's right.

Senator FLYNN: Then if we take these three taxes as being the general tax we deduct first from the provincial abatement to find out what was the amount left to the federal Government?

Mr. JOHNSON: Yes.

Senator FLYNN: And we deduct from that the equalization and stabilization payments, and that gives us the amount which remains for federal purposes—forgetting about the joint programs.

Mr. JOHNSON: I think so. However, if I may suggest it, I would be inclined rather to treat the equalization and stabilization payments as being money which the Parliament of Canada would decide to appropriate for this purpose in the same manner as they might decide to appropriate money for defence or old age security payments or other purposes. I observe this because you will note that the equalization payments under this bill are no longer related to just the three taxes.

Senator FLYNN: I agree, but the abatement is given only with respect to three main taxes. The equalization payments may come out of general revenue. But if we want to find out what is left out of the three taxes, we might deduct it for the sake of finding an alternative formula.

I was just suggesting that equalization and post-secondary education adjustment payments could be the object of one formula. You could very well combine, for instance, section 13 of this act with the other sections of Part I which indicate what amounts are to be collected by the provinces or for the provinces.

Mr. JOHNSON: Yes, that is right, sir. The difference would be in the distribution among the provinces. As you are observing, the adjustment payment with respect to higher education is related to the actual expenditures that the provinces themselves have decided upon. A general formula would simply ensure that all provinces get national average revenues, and Ontario, Saskatchewan, Alberta and British Columbia would get above the national average. That is the distribution under a general formula. The introduction of adjustment payments with respect to a particular function of Government alters that adjustment so that provinces with higher education expenditures—and it would be possible to

refer to them—would get an additional sum, and the lower-cost provinces, of course, would get a smaller additional sum, relatively.

Senator FLYNN: Let us say the three federal taxes that we were speaking about represent 30 per cent of the income, or whatever is the basis for the application. If we deduct, let us say, 10 cents for the provinces, we would get 20 cents for the federal, which would include the equalization payments or whatever you want to call them. You could very well change the rate of personal income tax, corporation tax and succession duties, and provide a rate which would be sufficient to bring in enough money to pay for the equalization and stabilization payments without having regard to the abatement in favour of a province. Is that possible?

Mr. JOHNSON: The alternative arrangements I think, sir, would provide for a uniform abatement of tax plus equalization. The results of this would be, of course, to reduce the rate of benefit to Nova Scotia, Newfoundland, New Brunswick, Prince Edward Island, Quebec and Manitoba, and to increase the rate of benefit to British Columbia, Alberta, Saskatchewan and Ontario.

Senator FLYNN: I do not think you have my question.

Mr. JOHNSON: I am sorry.

Senator FLYNN: Because this is not possible, in my perspective, because you are not deducting from the federal rate of tax the proportion needed for the equalization payments. You are deducting only the standard abatements given to all provinces.

Mr. JOHNSON: Yes.

Senator FLYNN: So you are reducing the federal rate of tax to that level which is sufficient for the federal to remit to the provinces the equalization and the stabilization payments, so this is possible.

Mr. JOHNSON: Yes.

Senator FLYNN: Is there any advantage for the federal Government in having a higher rate of tax which might, to some extent, control the provinces' expenditures or control the initiative of the provincial governments, rather than have the true rate of tax it is in fact collecting for its own purposes and for the purposes of equalization and stabilization?

Mr. JOHNSON: Do I understand you correctly, sir? If I understand you, you are asking whether it would be feasible for the Parliament of Canada to impose a higher tax rate in British Columbia, Alberta—

Senator FLYNN: No, a lower general tax rate sufficient only to provide for the needs of the federal Government and the stabilization and equalization payments. Forget about the abatements that are given to all the provinces.

Mr. JOHNSON: Yes, the Parliament of Canada could decide, if it did not want to pay out one-half a billion dollars in equalization payments, to reduce its taxes.

The CHAIRMAN: That is not his question. His question is: Instead of making an abatement, let the provinces tax whatever they need. Then the federal rate comes down, and it would be for federal purposes plus equalization and stabilization.

Mr. JOHNSON: Forgive me for not understanding.

Senator FLYNN: Well, maybe I did not put it correctly.

Mr. JOHNSON: No, not at all. This is a question which has been discussed between the federal and provincial ministers, this general question as to whether the abatement system is the best way of handling individual income tax and corporation tax. I think the answer is there were good technical reasons—and I mean technical tax reasons—for using the abatement system. But it strikes me it would be technically possible now to devise a system which would provide for a

reduction in federal rates, but with the federal Government still in a position to collect the taxes, the provincial taxes imposed by the provinces at whatever rates they chose; but you would still have to face the technical problem that would have to be resolved, of what to relate the provincial percentage to.

Senator FLYNN: It would be the problem of the provinces first, I would suggest.

Mr. JOHNSON: Yes, except—

Senator FLYNN: It would be a collection problem.

Mr. JOHNSON: Yes, the nine provinces which have tax collection agreements have a tax law which is legislated by their legislatures in reference to the federal law. It is very easy to say the provincial rate is a certain percentage of the basic tax as defined in the Income Tax Act of Canada.

The other approach I think the federal and provincial officials would agree is certainly worth examining, and Mr. Sharp certainly gave a clear indication of his desire to look to methods of getting away from the abatement system, which would be in the general direction you are mentioning.

Senator THORVALDSON: Would not that involve possibly a different tax rate for a every province?

Mr. JOHNSON: The provincial governments may now impose a different tax rate, but they express it as a percentage of the basic tax. What would be involved would be finding some other point in the computation of income tax to which the provinces would apply a percentage.

The CHAIRMAN: Do you think the abatement principle is a form of control over what the federal authority may have to pay in equalization and stabilization?

Mr. JOHNSON: It was and it will be, sir, unless and until the Parliament of Canada enacts this bill. The abatement system has served two purposes. The first was to indicate to the provinces the extent to which you in Parliament are prepared to reduce federal taxes. The second purpose served was to say the equalization payments to the poorer provinces will be tied to defined standard rates. The equalization formula proposed here would apply to whatever rates the provinces chose and, therefore, the abatement system would no longer be needed for equalization.

The CHAIRMAN: If instead of having a uniform rate in nine of the provinces—and they have tax legislation which amounts to 28 per cent—

Mr. JOHNSON; Yes.

The CHAIRMAN: —if the various provinces had various rates, and some higher than 28 per cent, would that affect and reduce the amount of equalization and stabilization?

Mr. JOHNSON: Under the formula contained in this bill, if the provinces generally were to increase their income taxes, it would increase the equalization.

Senator FLYNN: Not to them.

Mr. JOHNSON: No, but let me put this to you. Let us suppose, for the sake of argument, that Ontario and Quebec, the two largest provinces, were to increase individual income tax next year. This would mean the average provincial income tax rate would have risen and, given the formula that we were talking about a few moments ago, this would increase the equalization payments to the poorer provinces.

Could I just put it to you in this way: The equalization payment is paid to a province which has a personal income tax base that is lower than the national average. To the extent that the income tax base is higher the disparity between the yield in the poorer provinces and the national average increases, and therefore equalization—

The CHAIRMAN: No, the way I was putting it was if a province generates more tax revenue by increasing its rate beyond that average, but what you are saying is that it may help a "have not" province get a little more money if you raise the average. But, will it enable the province which increases its tax rate to get more money from the federal treasury?

Mr. JOHNSON: No, sir.

Senator FLYNN: But this formula for the abatement rather than the federal rate has some influence on the general fiscal policies of the province.

The CHAIRMAN: Senator Flynn, I have struggled for many years to get this far, and I am ready to wait for the next step.

Senator FLYNN: I am ready to wait too.

The CHAIRMAN: I can see that the next step has got to come.

Senator SMITH (*Queens-Shelburne*): I wonder if Mr. Johnson has something to say about the stabilization part of the formula that deals, for example, with the four Maritime provinces. Let us take Newfoundland first—it does not matter to me. What you are attempting to do is place a floor under the amount of payments which can be received by these four provinces in particular?

Mr. JOHNSON: Yes, sir. Up until the present time, or until Parliament enacts this bill, the only stabilization payments that are paid to the provinces apply to those provinces which receive equalization, and they apply with respect to particular revenues of those provinces—that is to say, their equalization and their tax abatements.

The proposal in this bill is that all provinces would be entitled to stabilization payments, and the stabilization payments would be calculated by reference to all provincial revenues, in much the same way as the equalization formula. To be more precise about it, if in any year the revenues of the province of Newfoundland were to fall by more than five per cent the Parliament of Canada under this bill will have appropriated money for Newfoundland in order to bring her up to the 95 per cent.

Now, there is the obvious technical qualification with which I am sure you are familiar. This is, of course, at level tax rates. The stabilization would not be paid to a province that just reduced its tax rates.

Senator SMITH (*Queens-Shelburne*): Then, Mr. Johnson, as I understand it, there was some attempt made to continue the benefit under the scheme of the Atlantic Provinces Adjustment Grants. That is, that was added to this.

Mr. JOHNSON: Yes, there were two parts to your question, and I have answered only the first part. The second part had to do with the guarantees in respect to the Atlantic Provinces Adjustment Grant. The bill provides that each Atlantic province will receive at least as much more under the new equalization arrangements as that province now receives in the form of an Atlantic Provinces Adjustment Grant.

The CHAIRMAN: Are there other questions?

Senator CROLL: I wonder if there are people in Canada outside of yourself, Mr. Johnson, who understand this formula.

Mr. JOHNSON: I hope, sir, that there are at least ten.

The CHAIRMAN: Yes, otherwise you are going to have some problems. Are there any other questions?

Senator THORVALDSON: Mr. Johnson, if the Province of Manitoba, which I think has one of the finest medical schemes anywhere in the world—

Senator CROLL: The finest what?

Senator THORVALDSON: Medical care scheme which, by the way, is voluntary. If I said to you that the province of Manitoba is compelled under these arrangements to accept compulsory medicare, and if it did not that would leave \$18 million of federal funds on the table, would you say I was right or wrong?

Mr. JOHNSON: I would say, sir, that if I answered that question you would not think I was a very good public servant.

Senator THORVALDSON: That is the answer I was expecting.

The CHAIRMAN: Are there any other questions on this phase? Do you wish to ask Mr. Ross any questions on the secondary—

Senator ISNOR: I want to ask Mr. Ross or Mr. Johnson a question. What effect is this going to have on the competition between the different universities for staff?

Mr. Ross: What effect is this scheme going to have on the competition we have for staff?

Senator ISNOR: Yes, in regard to staff. For instance, the Maritimes have not been able to compete with the universities in Ontario in respect of salaries.

Mr. Ross: Yes. Well, I know this is a very real problem throughout the country. I think the hope is, taking the Atlantic provinces which you mention particularly, that this will give those provinces more support than they presently have. From that point of view they will be in a better competitive position. This, of course, depends on the use the provincial governments make of this money.

Senator ISNOR: Have the provincial governments any choice in respect of the distribution of this money?

The CHAIRMAN: Yes, they have the whole choice.

Mr. Ross: They have the complete choice. They can spend it as they like, and, of course, one hopes they will spend it on educational institutions.

Senator CONNOLLY (Ottawa-West): Subject to the restrictions in section 14.

Mr. Ross: Well, these exclusions, Senator Connolly, are to help in the definition of operating costs.

The CHAIRMAN: They put some allocation between the provincial responsibility and the federal contribution.

Senator CONNOLLY (Ottawa-West): Quite. I wonder if at this point I should ask a certain question, because Senator McCutcheon unfortunately is not here. I may not be able to put this in the way he put it this afternoon, but he took the case of Ontario which under the old formula would receive—

The CHAIRMAN: \$97.1 million.

Senator CONNOLLY (Ottawa-West): Yes, \$97.1 million, and under the new formula it will get \$152.7 million. Now, he said also, because he felt the definition of "operating costs" was too narrow, that Ontario would have to provide for capital expenditures in universities running to somewhere between \$85 million and \$200 million. In other words, he said that the expenditures on post-secondary education in Ontario from their own sources were going to be much higher than the expenditures they could make on the basis of money provided under this legislation. Have you any comment about that?

The CHAIRMAN: I am just wondering, senator, whether you think Senator McCutcheon was referring to the fact that the difference might represent the exclusions under section 14 of this bill.

Senator CONNOLLY (Ottawa-West): Well, he was talking about the exclusions, and he said that the exclusions led up to a narrower definition of "operating costs" than perhaps was warranted. Then he went on to talk about the projected capital expenditures in this field that the Province of Ontario would

contemplate. He said that they would run from \$185 million to perhaps \$200 million.

Without wanting you to act as a referee and perhaps giving an incomplete answer, I said, well, the intention is, first of all, to give more money in this case to the provinces to look after their needs in the field of higher education, and in fact through the new formula another \$200 million was to be distributed. Ontario was to jump from 97.1 to 152.7, but having the responsibility, the jurisdiction under section 93 and having their own sources of revenue it was felt it was not the responsibility of the federal Government at all. Now, I am not asking you to—

The CHAIRMAN: Be the referee.

Senator CONNOLLY (*Ottawa West*): To be the referee and to take sides, by any means. But what is the situation? Perhaps we would be glad to see something on the record. Are the amounts that the provinces would get under the scheme of this bill, generally speaking, lower than the amounts the provinces themselves tax for and pay out in the same field?

Mr. ROSS: I hope I understand the question properly, and please correct me if I do not. I think that what Senator McCutcheon was really saying this afternoon was that the contributions that were proposed by the federal Government were not really adequate to take account of the capital cost as well as the operating cost of the institutions. Of course, the transfer that the federal Government is making can be used in the educational field for either operating or for capital. This is for the province to determine.

As regards the second point of your question, which I think was really this: Is the federal Government making an adequate contribution in view of the—

Senator CONNOLLY (*Ottawa West*): I do not think you should answer that question. It is a matter of policy. The other part of the question is factual, namely, generally speaking, are the provinces taxing for and spending more in this field than the amounts that will be allocated to them under the new formula?

Mr. JOHNSON: The provinces, sir, are indeed spending a good deal more. The total expenditures of the provinces will almost mathematically be double, in higher education, the amount that is transferred under this bill plus the capital expenditure.

Senator LEONARD: Including Ontario?

Mr. JOHNSON: Yes.

Senator FLYNN: With regard to section 11, paragraph (b), that paragraph states:

“educational institution” means an institution of learning that offers courses at a post-secondary level.

Would that definition include all the denominational institutions?

Mr. ROSS: Yes, sir, all denominational institutions which will offer programs of study at a post-secondary level, in the sense of a post-secondary program of study, that is a program that requires entry for junior matriculation, and is a course of 24 weeks in duration.

Senator FLYNN: So in all fairness, if they are counted in the amount paid to the provinces we would expect the provinces to pay them a subvention on the basis of what they received from the federal Government?

Mr. ROSS: I think I am correct in saying that the Prime Minister expressed that hope at the federal-provincial conference.

Senator PEARSON: You say it covers entry for junior matriculation, which is a course of 24 weeks duration?

Mr. Ross: In the first place, it is a program of study that requires for entry a certain academic standing. Secondly, it requires a course of 24 weeks full time study. In the third place, the provinces are given protection against people who simply put up a nameplate saying that they are running a course. It must be certified by the province as a post-secondary program.

The CHAIRMAN: Any other questions? Are you satisfied with the information you have received? Shall I report the bill?

Senator FLYNN: Yes. But for the record, may I say that it seems to me that the problem of federal-provincial fiscal relations does not progress very much. It seems to me that it is double faced, as we have often said, that there is the problem of the distributoin between the two levels of government of the tax dollar and also the distribution of the sources of taxation. It seems to me that because the federal Government might think it needs to do this as a contribution of the general economy and because the provinces are afraid to enter into the wilderness of the new tax fields, nobody is interested in really clarifying this situation. That is why we have formulas which become more and more obscure. I think that nobody is interested in settling the problems, that they would rather fight and cry and settle them.

The CHAIRMAN: We have refinements. I think some of them are due to the fact that you still have strong defenders of provincial rights on the question of encroachment as between federal and provincial jurisdiction. So we are still evolving schemes. We have the state where the federal authority gives the money and the provincial authority expends it as it will, but here it qualifies on the basis of post-secondary education. Maybe the next step will be what I have been hoping for, where the province raises the money and certain areas of tax are available for it to do that. But we have to assume that the people of the provinces are going to be responsible, and if they are not responsible concerning this money that is being turned over from the federal authority, then that province will suffer for it, and any political authority knows that it will suffer, and that is its safeguard.

Senator FLYNN: That has to be proven yet.

The CHAIRMAN: We have moved forward a little, but there is a lot more I should like to see done.

Senator THORVALDSON: I should like to ask one question of Mr. Johnson. Since 1945 how many major changes have been made in the equalization and stabilization payments field? Is this a second major change, or have there been others?

Mr. JOHNSON: I would say this would be the third major change, and this is a personal opinion, if I may say so. The first major change was in 1957 when the equalization payments were made unconditional. I may have my years a little mixed. However, in the negotiations of 1955-56, the equalization payments were made unconditional and not tied to tax rental.

The second major change was in 1960-61. In those negotiations—the tax collection arrangements were made independent of the levels of provincial taxes, let us say, the federal Government would enter independently into tax collection arrangements with the provinces, on whatever tax rates they chose to impose.

Senator LEONARD: We know there was a controversy with respect to the provincial grant to McGill. I understand from your explanation that it is still possible under this bill for the Province of Quebec to give McGill, as its grant, a sum less than one-half of the operating costs. I note there is no tie-in. Even though the province receives from the federal Government, either through tax abatement or through subsidy, an amount that includes half the operating costs

of McGill, the province still does not need to give that amount of money to McGill. Is that right?

Mr. JOHNSON: Yes.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, I would like to express special thanks to the officials, who have helped us very much, indeed.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966-67

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 39

Complete Proceedings on Bill S-57,
intituled: "An Act to establish a corporation for the administration
of the National Museums of Canada".

MONDAY, MARCH 20th, 1967

WITNESSES:

Department of the Secretary of State: The Honourable **Judy LaMarsh**,
Secretary of State and **H. O. R. Hindley**, Special Assistant, Deputy
Minister's Office.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Isnor	Reid
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	Mcnaughton	Vien
Farris	McCutcheon	Walker
Fergusson	McDonald	White
Flynn	Molson	Willis—(47)

Ex officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Friday, March 17, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Everett, seconded by the Honourable Senator Desruisseaux, for second reading of the Bill S-57, intituled: "An Act to establish a corporation for the administration of the National Museums of Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C. moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

MONDAY, March 20th, 1967.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 a.m.

Present: The Honourable Senators Hayden(*Chairman*), Baird, Benidickson, Brooks, Connolly (*Ottawa West*), Cook, Fergusson, Gershaw, Haig, Irvine, Kinley, Leonard, McDonald, Pearson, Robuck, Smith (*Queens-Shelburne*), and Thorvaldson. (17)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Leonard it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-57.

Bill S-57, "National Museums Act", was read and considered.

The following witnesses were heard:

Department of the Secretary of State:

The Honourable Judy LaMarsh, Secretary of State.

H.O.R. Hindley, Special Assistant, Deputy Minister's Office.

On Motion of the Honourable Senator Smith (*Queens-Shelburne*), it was *Resolved* to report the said Bill without amendment.

At 11.40 a.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

MONDAY, March 20th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-57, intituled: "An Act to establish a corporation for the administration of the National Museums of Canada", has in obedience to the order of reference of March 17th, 1967, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Monday, March 20, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-57, to establish a corporation for the administration of the National Museums of Canada, met this day at 11 a.m. to give consideration to the bill.

Senator **SALTER A. HAYDEN** in the chair.

The **CHAIRMAN**: I call the meeting to order. We have before us for consideration this morning Bill S-57, to establish a corporation for the administration of National Museums of Canada. As this bill originates in the Senate I think it will be in order to have a record made of our proceedings.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The **CHAIRMAN**: Appearing before us this morning is the Secretary of State, The minister named in this bill. Madam Minister, is there a general statement you would like to make?

The **Honourable Judy LaMarsh, Secretary of State**: No, Mr. Chairman, I have no general statement. This bill is to re-organize the administration of the National Gallery and the various museums. We have used as a model the Smithsonian Institution in Washington which has a great many different kinds of galleries and museums, and, indeed, a zoological gardens, as part of it. We have set up one fiscal administration. There will be directors and boards of trustees, however, for each of the various museums and galleries. There is to be a central fund for collections, which is something we do not have at the moment.

That is, very briefly, what the scheme of the bill is. Its object is to tidy up and to make a more orderly administration out of what has, like Topsy, just grewed in the past.

The **CHAIRMAN**: When you speak of a central place for the collection of funds, you mean for contributions?

Hon. Miss **LAMARSH**: Yes, for both the moneys that the Government sets aside. You will find this in section 10, where a National Museums Trust Account and a National Museums Special Account are set up. These are moneys that are received from the sale of materials which will be surplusd from amounts voted by Parliament, and by gifts or donations of one kind or another.

The **CHAIRMAN**: Is this anything like or comparable to the National Trust of England?

Hon. Miss **LAMARSH**: Not really, senator. I understand the National Trust in England is able to hold houses and great structures. I do not think we have any authority to hold anything like that.

The CHAIRMAN: If there are any questions the committee would like to ask, this is the time to ask them.

Senator BROOKS: I have a few questions to ask the minister, if I may, in speaking of the bill. Are you following the Smithsonian Institution?

Hon. Miss LAMARSH: Not slavishly, but with one board for administration of all the museums and the gallery and consultative committees.

Senator BROOKS: I notice that section 3 of the bill states:

A corporation is hereby established to be known as the National Museums of Canada, consisting of a Board of Trustees composed of a Chairman, Vice-Chairman, the persons from time to time holding office as

(a) the Director of the Canada Council, and

(b) the President of the National Research Council, and ten other members,...

And so on. That means they will always be the the Chairman and the Vice-Chairman?

Hon. Miss LAMARSH: Oh, no, senator. It is not intended that they be designated Chairman and Vice-Chairman. They shall be on the board.

Senator BROOKS: Then there are to be 14 on this board altogether?

Hon. Miss LAMARSH: That is my recollection.

The CHAIRMAN: Yes, 14.

Senator BROOKS: Again, dealing with the purposes and powers. It is chiefly educational, I take it, from the reading of the bill?

Hon. Miss LAMARSH: Yes, I suppose one would call it educational. There is not any other reason, I suppose.

Senator BROOKS: What authority would this organization have over different provincial organizations?

Miss LAMARSH: Nothing.

Senator BROOKS: I have in mind some that are partly national and some partly provincial. In other words, we contribute from Ottawa to certain funds for certain museums across Canada.

Hon. Miss LAMARSH: This is only for national museums and galleries which are located here.

Senator BROOKS: And this organization is being set up for that purpose, the national galleries and museums connection with the National Gallery, etc. in Ottawa?

Hon. Miss LAMARSH: If you look at page 3 of the bill at section 6, they are detailed, sir.

Senator BROOKS: I was a little concerned in reading that the corporation shall comprise the National Gallery of Canada, a Museum of Natural History, a Museum of Science and Technology, and such other museums as may, with the approval of the Governor in Council, be established by the board. Just what other museums would that be?

Hon. Miss LAMARSH: We are not sure what might come in the future, but one I would like to see in the national capital is a zoological gardens.

Senator BROOKS: But this would have nothing to do with any museum outside of those which may be established by the National Gallery.

Hon. Miss LAMARSH: No, sir.

Senator BROOKS: And there would be a director for each museum. How many would you anticipate besides what are mentioned here?

Hon. Miss LAMARSH: We do not anticipate any more than these to begin with in any event.

The CHAIRMAN: Four are enumerated?

Hon. Miss LAMARSH: Yes.

Senator BROOKS: You have four here, and then "such other museums as may, with the approval of the Governor in Council be established by the board." And will there be established a director for each museum you set up?

Hon. Miss LAMARSH: Yes.

Senator BROOKS: Most of the work is being done by museums in different provinces.

Hon. Miss LAMARSH: We have a pretty fine one here. The surroundings are not very good, but when we do have a good building I am sure people will appreciate the national collections one.

Senator BROOKS: Now about the Secretary General of the corporation. He would have control, I would take it, of the three different funds mentioned here?

Hon. Miss LAMARSH: Yes. He would be senior officer for all of them. He is the centralizer.

Senator BROOKS: What staff would he have? Would each fund have a staff of its own?

Hon. Miss LAMARSH: Well, for instance, the National Gallery will be set up much as it is at the moment, but there will be a Secretary General who will be in charge of the gallery and museums and will centralize the administration, particularly the national administration. I should not think his staff would be very large. Some officers would be able to be removed from the present museums and in the gallery because their present functions would be performed by the new Secretary General of this staff.

Senator BROOKS: Referring to page 5, section 13—by laws. That section says that the board, with the approval of the minister, may make by laws:

- (b) for the establishment of consultative committees consisting of members of the Board or persons other than members or both;

Would these consultative committees be located in Ottawa as well?

Hon. Miss LAMARSH: I should think they would be drawn from people across the country, but they would meet.

Senator BROOKS: And the remuneration and travelling expenses would be fixed by the board?

Hon. Miss LAMARSH: Yes.

Senator BROOKS: You have no idea, of course, how many consultative committees there would be at the present time.

Hon. Miss LAMARSH: It would depend on the expertise of the people on the central board, I suppose, and the problems which might arise from time to time. It is to give them flexibility, senator.

Senator BROOKS: Have you any idea of the extra cost when this set up is established?

Hon. Miss LAMARSH: We would hope it will reduce costs by providing that duplication of services may be done away with.

Senator BROOKS: I cannot just see how that can be, with all due respect, because I notice from the Estimates of next year, which I do not wish to discuss right now, that is, 1967-68, by Vote 15, it is increased by almost one-third.

Hon. Miss LAMARSH: I think part of that is largely a sum for acquisitions of new paintings and new museum pieces.

Senator BROOKS: Well, for 1966-67, the amount is \$931,000 for common services; and for 1967-68, for common services, it would be \$1,673,670.

Hon. Miss LAMARSH: The difference of course is that there is a new Science Museum which we started collecting for this year. The whole purpose of this reorganization is to save money and avoid duplication of services.

Senator BROOKS: It might provide a great disappointment.

Hon. Miss LAMARSH: Well, we are on the side of the angels anyway, and we can try.

Senator BROOKS: Also this bill speaks, in section 5, of arranging for and sponsoring travelling exhibitions of materials, and so on. Canada is a very large country to travel exhibitions from Ottawa across the country, say from Newfoundland to Vancouver, or Victoria.

Hon. Miss LAMARSH: Well, the National Gallery does that quite frequently now, particularly during centennial year; but one of the complaints has been that we have not been able to send them out often enough because it is so expensive.

The CHAIRMAN: Would centennial year and the costs identified with this work account for some of the increase in these figures Senator Brooks has been talking about?

Hon. Miss LAMARSH: No. I think that is the new museum, sir.

Senator BROOKS: That would not be organized by the centennial, Mr. Chairman, that is starting this year.

The CHAIRMAN: Any other questions?

Senator PEARSON: My question has been pretty well answered, but I should just like to make a comment. It seems to me that we should see that this new board does not get out of hand. This scares me a little. \$10 million does not seem very much at the present time, but it looks as if this might expand to something like the C.B.C. unless we have direct control by Parliament. Is it so, Miss Minister, that the Parliament will have direct control of this operation?

Hon. Miss LAMARSH: They will not have any money if Parliament does not vote it.

Senator PEARSON: Sometimes the C.B.C. does not have any money, but they always spend it.

Hon. Miss LAMARSH: There may be some other reasons in the C.B.C. which I hope to be able to clear up before very long.

Senator BROOKS: Perhaps you could give us some idea of the contribution that is made from Ottawa here to the different museums across Canada now.

H. O. R. Hindley, Special Assistant, Deputy Minister's Office: There are a few grants. There is no direct contribution to provincial museums as such. They may get grants from the Canada Council, and often one or two from either our department or the Historic Sites Division of Indian Affairs.

Senator BROOKS: According to the report, about 75 per cent of the contribution, as I understood it, goes to Louisbourg.

Mr. HINDLEY: That is a project under Historic Sites.

Hon. Miss LAMARSH: That is 100 per cent paid for by the Canadian Government. That is not in my department. We have lots of centennial projects in which there is a dollar a head paid by the Centennial Commission, a dollar a head by the provincial government, and at least a dollar a head by the municipalities, and during the centennial museums are constructed across the country. But most of the museums, that is, locations such as Port Royale and Louisbourg, are of the national sites monuments board, which reports to my colleague, the Minister of Northern Affairs, and I understand that these are paid for entirely by us and do not fall within the purview of museums. You will recall

that two years ago museums were taken out from Northern Affairs, and I still have some hope that national historic sites will be, but it has not happened yet.

Senator KINLEY: But this board has no authority yet.

Hon. Miss LAMARSH: No, sir.

Senator SMITH (*Queens-Shelburne*): May I ask whether or not it is contemplated that some time in the future even the National Archives will be under the jurisdiction of the new board?

Hon. Miss LAMARSH: When this was being drafted, this was one of the things I asked about, because it seemed to me sensible to put it all together. Dr. Lamb, I recall, was of the opinion it should not be part of this central organization, so we did not pursue that very far.

Senator SMITH (*Queens-Shelburne*): In other words, the Archives fall more into the classification of a library?

Hon. Miss LAMARSH: A library.

Senator SMITH (*Queens-Shelburne*): And the papers have been collected to form a sort of library?

Hon. Miss LAMARSH: Yes. If we are to think of a national zoo in Ottawa, perhaps some of the honourable senators might speak to some of their more affluent friends and consider this a worthy thing to remember their country by.

Senator SMITH (*Queens-Shelburne*): One of the things I have in mind, as one of the purposes of this board, is to make recommendations, at least, towards the allocation of whatever funds might be available for museum purposes and art gallery purposes and so on; so that in future the art gallery, which is run now by a very competent young lady, will not, because of some natural sympathy which the minister might have for her, be left in the position that she might spend all of the money buying pictures in the future. I would like that the museums would get a more fair share than they might get when depending on who has most of the influence with whatever the government of the day may be.

Hon. Miss LAMARSH: I would think so. Sometimes things like the Leonardo can be very expensive. One might have thought that it is expensive spending \$5 million or \$6 million on something. On the other hand, the things to be collected might be something of antiquity or something for a science museum, which would cost \$1 million or \$2 million, that normally would be beyond the purchasing power of museums in a year; and the board would then decide that it would be preferable to make this particular purchase.

In the United States, the board, which is a very old one, as is the Smithsonian Institute, is supposed to be chaired by the president. Normally, his place is taken by the Vice-President. Both the Senate Leader and the House Leader of the Appropriations Committee are also on it. It is a very high-powered body. In addition, there are illustrious citizens on it from various walks of life. They keep the balance.

They are lucky there, in that they have things like their national gallery, which they do not put up any money for—not as in the case of our purchase of the Leonardo. It is one particular family that raises the money there and gives it to them, and has given it to them in the past.

Senator CONNOLLY (*Ottawa West*): You mean the Mellon family.

Hon. Miss LAMARSH: Yes, but it is a national gallery and it is owned by the state now. We have not been so lucky here in the past and have had to acquire nearly all of these things by tax money.

Senator BROOKS: This does not come under museums—these art gallery purchases? We had a bill, C-194, setting up the National Arts Centre?

Hon. Miss LAMARSH: That is the Performing Arts Centre.

Senator BROOKS: It has nothing to do with it?

Hon. Miss LAMARSH: No. That is the hole in the ground that is beginning to rise above the fence, at long last.

Senator MACKENZIE: I am interested in 5e, where it is stated that the board or corporation will undertake or sponsor programs in the training of persons for professional skills in the operation of museums. I wish to ask the minister whether this will include those who may be in charge of non-federal museums or institutions.

Hon. Miss LAMARSH: It is conceivable, senator. Some years ago in the National Art Gallery there was a training course, I am informed, that Dr. Jarvis had started, which was discontinued. The idea is to try to train people in the museums where the gallery is located.

Senator MACKENZIE: I think it is very important, particularly, as you know, in connection with the centennial programs, there will be a number of new museums across the country and one of the museum requirements will be to see they are properly staffed with individuals who are trained. If you, under this, can provide some of the training, I think it would be appreciated and a very valuable service.

Hon. Miss LAMARSH: We already provide grants to the museums for museum training. So far as I am aware, there never has been any in-museum training here. This is to provide flexibility, so that it may be done in the future. We have had a little trouble keeping our own museum directors. In the past, one of the largest difficulties has been the frequent postponement of new buildings.

Senator CONNOLLY (*Ottawa West*): May I follow that up? It seems to me, having lived all my life in Ottawa, that one of the difficulties about the museum, that has held it back, is the lack of adequate accommodation. Is that not so?

Hon. Miss LAMARSH: I quite agree.

Senator CONNOLLY (*Ottawa West*): I know that the building down at the end of Metcalfe Street has been condemned from the time I was a little boy. It was said that it was going to sink into the sand. This has been going on ever since. Some people say it cannot last another five years. This is going to be a major factor, I would think, in the planning of this new board, pretty soon.

Hon. Miss LAMARSH: Yes. We had a museum on the drawing board and it was a tremendous amount of construction for the centennial year, so it was cut back. We have been looking at the plans again now, to see whether or not we cannot construct at least part of the museum. You know that the National Art Gallery itself is in a building which was not intended to be a gallery, as it is an office building.

I had an opportunity, a week or so ago, when making a centennial speech in Philadelphia, to see what has been done in the "City of Brotherly Love" about museums. They have an absolutely magnificent museum there, that Dr. Evan Turner, formerly of Montreal, has there. I believe it was built by the City of Philadelphia completely—during the present year—and there are various museums attached around it. There are some magnificent things in it. It shows what can be done when one starts out to create a proper site for the collections.

I hope that in the future more and more Canadians will be interested in seeing this is done for the national capital.

The CHAIRMAN: This is one of the problems, to arouse interest.

Senator BROOKS: Following Senator MacKenzie's question on training, do we send any of our people away? I understand there is a training arrangement at the Smithsonian Institute in the States and also in Great Britain.

Hon. Miss LAMARSH: There is nothing regular about it, senator, but from time to time they go. As a matter of fact, in this past week I have had twelve of my museum people in Mexico—where I hoped to be myself—in the first exchange

of museum staff between that near nation and ours. Had it not been for the Governor General's funeral, I would have been there also. This is the first full-scale exchange we have had. As you know, museums are a very rich part of the heritage of Mexico.

Senator LEONARD: Will some of the present directors or members of the Boards of Trustees of the various galleries or museums lose their positions as a result of this?

Hon. Miss LAMARSH: Yes, senator. The boards will be reconstituted. I cannot tell at the moment who might lose their positions. Certainly some of them are very valuable.

The art gallery has had no new blood in the board for quite a long time. I think it might be useful to have some.

As a matter of fact, it seems to me that in these national boards it is always useful to have a fairly rapid and regular turnover, so that you get more people interested, around the country. Many of the people whom I would like to see serve on the board are people who themselves have outstanding collections; and I would like to see them leave them to the people of Canada.

Senator LEONARD: About how many people are there now on the boards of different bodies, compared with the ten who will be elected, as in section 3?

Hon. Miss LAMARSH: Mr. Hindley says he thinks it is about ten in the gallery. I have counted them a couple of times but never remember just exactly how many. It must be ten or twelve.

As the museums are currently organized they are under the Government, so they do not have any boards at all; and this board will be their board when it exists.

Senator THORVALDSON: If I may ask, Madam Minister, is the National Gallery a corporation under the National Gallery Act?

Hon. Miss LAMARSH: Yes.

Senator THORVALDSON: It is?

Hon. Miss LAMARSH: But the museums are not.

Senator THORVALDSON: But that corporation now goes out?

Hon. Miss LAMARSH: Yes.

Senator THORVALDSON: I notice the act is being repealed.

Hon. Miss LAMARSH: Yes. It was one of the earliest acts passed. If I remember correctly, it was passed in 1913 and has not been changed since.

Senator THORVALDSON: How many members are there on the Board of the National Gallery now?

Hon. Miss LAMARSH: I am not sure.

The CHAIRMAN: Senator Thorvaldson, to answer your question concerning the number of members on the Board of the National Gallery, according to the Consolidated Statutes of 1952, which have not been amended so far as I know, they provide for the board not less than five and not more than nine members.

Senator FERGUSON: I just wanted to ask about Section 18, which refers to the disposition of objects in collections. Is this a new provision or has there always been that authority? I had an idea that, generally, when an object went to a museum or to an art gallery, that is where it stayed. I did not know museums could trade objects back and forth.

Hon. Miss LAMARSH: Sometimes they do.

Mr. HINDLEY: One trouble particularly in a natural history museum is that objects become dilapidated. For example, if you have a stuffed robin which gets moths into it, at the present time there is no solution for getting rid of it. On the other point, we had in mind that it would be in the public interest for one

gallery to be able to make exchanges with another gallery. If one gallery, for instance, had a lot of examples of the work of one painter but none of another painter's works, and the position was reversed in a second gallery, it might be in the public interest for them to exchange a certain number of paintings. But the trustees can only do that on the recommendation of the provinces.

Senator FERGUSON: This is a new provision.

Hon. Miss LAMARSH: Yes, and only if it is in accordance with the terms of the request.

Senator FERGUSON: Yes. I realize that. May I ask another question concerning training? What sort of training can people receive in order to take up that kind of work? The reason I ask is that I was interested in a person who wanted to take over a small museum in New Brunswick but who would only be able to do so on the basis of having had some professional training of some kind. We went into the matter quite thoroughly at the time and there did not seem to be any place where a person could go to be trained, except to another museum similar to the one that he might want to work in to see how they carried on. Is that the way people get training?

Mr. HINDLEY: Madam Senator, we have in the last two years been working very closely with the Canadian Museums Association in order to develop a training scheme. It is very difficult to do this fast. We gave them money last year and have more money for them in the Estimates for next year. But it does involve seminars and courses for two or three weeks and also involves the co-operation of the museum directors, in that they have to be willing to take somebody in and let him work there, which takes up their time.

Senator FERGUSON: We were successful, I might say. That is what we did. We had to raise the money to pay the man's expenses because there was no provision for this and, apparently, there was no Government fund which we could have. I think we raised most of the money voluntarily.

Senator CONNOLLY (*Ottawa West*): Did you receive any money from the Canada Council?

Senator FERGUSON: We got two or three grants. One was from a voluntary organization and perhaps the Canada Council gave a little also. Finally we sent the person in and he got the job.

Senator MACKENZIE: Mr. Chairman, I have just one further point on Section 18. I notice that:

The Board shall not dispose of any object in the collections of the Corporation contrary to the terms on which the object was given, bequeathed or otherwise made available to the Corporation.

Does this mean that a museum may be loaded in perpetuity with items which may be found to be a nuisance, or can the museum use common sense in that matter?

Hon. Miss LAMARSH: No, sir. That would be a breach of trust. That is a trust.

Senator MACKENZIE: I realize that.

Hon. Miss LAMARSH: We just have to provide a place for the objects.

Senator MACKENZIE: A depository of some kind.

The CHAIRMAN: Or a dead end street.

Hon. Miss LAMARSH: That is right.

Senator KINLEY: I suppose you could give it back to the donor.

Hon. Miss LAMARSH: If he was still around.

Mr. HINDLEY: Sir, I think museum trustees would be very unwise to accept gifts and bequests if there were these perpetuity terms in them.

Senator MACKENZIE: That is why I asked the question.

Mr. HINDLEY: Once you have accepted the bequest, there is nothing you can do.

Senator MACKENZIE: However, I think museums should be encouraged to accept gifts so that people might get in the habit of giving them. The only problem is that once you get them you are stuck with them.

Senator CONNOLLY (*Ottawa West*): You always have the opportunity to refuse the bequests.

I would just say one thing to the minister. I would ask her to comment on this, because I am very interested to hear about people from the National Museum going to Mexico, but from what I have read in some of the professional journals I understand that there is a Dr. MacNish in the museum who has done some very outstanding archeological work in the caves in Mexico that has produced completely new information and a really revolutionary concept of life on this continent. Is he still with the museum?

Mr. HINDLEY: I cannot say offhand. I rather think, however, that he has been on contract. I do not think he was on staff.

Senator CONNOLLY (*Ottawa West*): At any rate, he was given credit in this work as an official in the National Museum of Canada. It seems to me that encouraging work of this kind by the museum cannot do anything but good for the country and for the museum idea in the country.

The CHAIRMAN: Are there any other questions? Are you ready to report the bill without amendment?

Hon. SENATORS: Agreed.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966-67

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 40

Complete Proceedings on Bill C-259,
intituled: "An Act to amend the Income Tax Act and to repeal
the Canadian Vessel Construction Assistance Act".

MONDAY, MARCH 20th, 1967

WITNESSES:

Department of Finance: F. R. Irwin, Director, Tax Policy Division.
Department of National Revenue: D. R. Pook, Chief Technical Officer.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Reid
Burchill	Lang	Roebuck
Choquette	Leonard	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Macdonald (<i>Cape</i> <i>Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	Macnaughton	Vien
Farris	McCutcheon	Walker
Fergusson	McDonald	White
Flynn		Willis—(47).

Ex officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, March 16, 1967:

"A message was brought from the House of Commons by their Clerk with a Bill C-259, intituled: "An Act to amend the Income Tax Act and to repeal the Canadian Vessel Construction Assistance Act", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Vaillancourt, that the bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Roebuck, that the bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

MONDAY, March 20th, 1967.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.40 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Baird, Benidickson, Brooks, Connolly (*Ottawa West*), Cook, Fergusson, Gershaw, Haig, Irvine, Kinley, Leonard, McDonald, Pearson, Roebuck, Smith (*Queens-Shelburne*), and Thorvaldson. (17)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Haig it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-259.

Bill C-259, "An Act to amend the Income Tax Act and to repeal the Canadian Vessel Construction Assistance Act", was read and considered.

The following witnesses were heard:

Department of Finance:

F. R. Irwin, Director, Tax Policy Division.

Department of National Revenue:

D. R. Pook, Chief Technical Officer.

On Motion of the Honourable Senator Leonard it was *Resolved* to report the said Bill without amendment.

At 12.35 p.m. the Committee adjourned until 2.00 p.m. this day.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

MONDAY, March 20, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill C-259, intituled: "An Act to amend the Income Tax Act and to repeal the Canadian Vessel Construction Assistance Act", has in obedience to the order of reference of March 16th, 1967, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Monday, March 20, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill C-259, to amend the Income Tax Act and to repeal the Canadian Vessel Construction Assistance Act, met this day at 11.40 a.m., to give consideration to the bill.

Senator **SALTER A. HAYDEN** in the Chair.

The **CHAIRMAN**: May I have the usual motion that the proceedings be reported?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The **CHAIRMAN**: We have as our witnesses this morning Mr. F. R. Irwin, Director, Tax Policy Division, in the Department of Finance, and Mr. D. R. Pook, Chief Technical Officer of the Department of National Revenue.

We are going to deal with the income tax amendments in Bill C-259. I was going to suggest that our usual practice in dealing with bills of this kind is that we start at Section 1 and go right through in order to get continuity, but you might say that there are three very important provisions in this bill covering a numbers of sections. I was going to suggest that perhaps Mr. Irwin should deal with those first, somewhat after the manner of my explanation of the bill in the Senate. In other words, the largest single item as to the number of paragraphs and possibly importance would be the deferred profit sharing plans and certainly those sections that bear on the Canadian Vessel Construction Assistance Act are very important in the effects which they have on various operations in Canada.

Would that be a convenient way so far as you are concerned, Mr. Irwin? Let us start with all the sections dealing with deferred profit sharing plans. You can enumerate them as we go along.

Senator **ROEBUCK**: Does that include these pension plans, about which I spoke to you this morning?

The **CHAIRMAN**: We were talking about deferred profit sharing plans. I suppose you might call it a kind of pension plan. The employer makes a contribution to a trustee and the employee is the beneficiary and usually it has some relationship to his retirement from service.

Senator **ROEBUCK**: Yes. Well, that is included in what we are taking up now.

The **CHAIRMAN**: That is right. Now, have I given a sufficient description of your duties in this regard, Mr. Irwin?

Mr. F. R. Irwin, Director, Tax Policy Division, Department of Finance: I think so, Mr. Chairman. The officials who have come here are anxious to be of

whatever help we can to the committee in the way of answering questions or providing information.

If I may be permitted to comment on anything that has happened in the Senate, I think the Chairman gave a very good outline of the main features of the bill. I hope I will not repeat what has already been explained.

Senator ROEBUCK: I raised a question there, and I might as well raise it here now. In that excellent address and explanation the present Chairman said that if the plans that have been registered do not comply with the present bill as it amends the old act, the plans may be cancelled. I presume, therefore, that the funds would be distributed, or something of that kind. That is not the point that I am making.

What struck me was that these amendments, with the various changes in the old act, are very complicated—not to you but to somebody who has never studied the act or is a layman in the matter, who, to make sure his present plan complies with the new act, would require a study of the new act together with a study of the old act, and then a study of various plans. In most law offices we have several plans. I do not know the detail, but I am quite sure my office has a number of them.

What I would like to know is: Will the department do something towards assisting the law officers and perhaps the people interested in the plans, the principals of the plans, to observe the conditions of the new bill, whatever they will be? Will you get out some circular, or something of that kind, warning these people what they should do to comply with the new bill?

Mr. IRWIN: First, perhaps I should explain that most of the amendments in this bill dealing with what you have, I think, referred to as pension plans, deal with what the bill calls deferred profit-sharing plans. Some companies have a plan which they may call a pension plan but which may have some profit-sharing features. I think you may find plans which companies call profit-sharing plans which have been registered as pension plans. There is some similarity, but the amendments before us deal with deferred profit-sharing plans.

Senator ROEBUCK: They are all registered, are they?

Mr. IRWIN: Yes. A profit-sharing plan is a plan into which an employer makes contributions on behalf of his employees. If it is a deferred profit-sharing plan the funds are held in trust for a number of years, and the law provides that the income accumulating in the trust is not subject to income tax and payments out of the plan to beneficiaries will be taxable income.

The differences between a deferred profit-sharing plan and an employees' pension plan are, first, that there is no deduction for employee contributions into the deferred profit-sharing plans. Second, the rules about payment of benefits from the plan to employees are much less rigid in the case of deferred profit-sharing plans. The payments may be made at any time; they may be in lump sums, if the plan so provides. I think those are the two important differences between the plans but, as you mentioned, both have to be registered with the Department of National Revenue.

The Minister of Finance mentioned in the spring budget in 1966 that the rules concerning deferred profit-sharing plans would be changed, and a resolution was tabled at that time. The legislation based on that resolution was not introduced in July, 1966, when the other amendments flowing from the March 1966 budget were put forward. So, people who are interested in these plans have had a long time to change their plans or, at least, they were warned changes were coming.

The bill now before us was introduced in December, 1966, and was let stand as a bill for two months before being considered, so that there would be a good opportunity for people who were interested in these plans to study the proposed legislation and make known their views on it to the Government. I believe the

minister made it clear when speaking on this, that in that period a number of representations had been received and these have been very valuable. They have all been examined very carefully, and a number of amendments were proposed when the bill was at second reading stage in the House of Commons.

I come now to the heart of your question, which is: What is the department going to do to help those interested in deferred profit-sharing plans to comply with the new rules and to understand them? However, I must refer to my colleagues from the Department of National Revenue, because this is administered by the Department of National Revenue. I do not know of any circulars or bulletins or information that is being prepared. I think it is hoped that those interested in these plans will study the bill and see what it means for their plan, and, where doubt or uncertainty does arise, will communicate with the department or with the local district office.

Senator ROEBUCK: Could you give us a short statement of what the changes are that those interested should be vigilant with regard to?

Mr. IRWIN: I will do my best, sir.

Senator ROEBUCK: Because the record of what we are saying now might be useful to some of us.

Mr. IRWIN: I think we could say that there are three or four main features of the amendments. One change is in connection with vesting. Plans in the future must provide that funds allocated to a member of the plan be vested in that member or beneficiary within five years—that is, within five years after allocation.

To give an example, if money is contributed to a plan by an employer in 1967 and other earnings of the fund are allocated in 1967 to employee "A", that allocation must be vested in that employee by 1972. Similarly, the amount that is contributed in respect of that employee in 1968 must vest in that employee by 1973, and so on.

Another set of rules provides that amounts paid into a plan, and the earnings of a plan, must be allocated to beneficiaries each year, and also that the plan must provide for payment out to a beneficiary promptly after the earliest of four events which are when he dies, when he retires, when the plan is wound up, or when he becomes age 71. We will come to these details later as we go through the bill. The amendments describe what shall be regarded as qualified investments, and they impose penalties for non-compliance with the new rules.

One other important rule deals with what we call reallocation of forfeitures. I have explained that there must be vesting after five years, but this vesting rule means that there may be substantial amounts in the plan that are not yet vested in an employee when he leaves the employment. There may be four years of payments on his behalf not vested. So, when an employee leaves an employer there may be some amount which has been allocated to him which he must give up or forfeit when he leaves.

In the past it was possible for plans to allocate these forfeitures to one or two employees, so that substantial amounts might accrue to one or two people. There are new rules dealing with forfeitures, and the rules provide that amounts forfeited must be allocated to somebody, or turned back to the employer. They provide further that amounts allocated may not exceed a certain amount, and this certain amount is computed by reference to the years during which the employee has been a member of the plan. You take the years of membership times \$2,000 per year and that gives you a figure which we call an acceptable reallocation of forfeitures.

I think, Mr. Chairman, these are the main rules that employers with plans, or those contemplating new plans, must bear in mind.

Senator ROEBUCK: Your statement may be very valuable.

The CHAIRMAN: Are there other factors in connection with deferred profits that you want to talk about? We have really hit the high spots, have we not, other than the question of tax penalties? There are tax penalties which are the whip to enforce observance of these new requirements.

Senator HAIG: Mr. Chairman, are the words "qualified investment" defined?

The CHAIRMAN: Yes, you will find that on page 27 in paragraph (e). It is defined by identifying the various kinds of things that would be acceptable investments.

Senator HAIG: That is a wider definition than that of "trustee investment" under the Insurance Act, then?

The CHAIRMAN: I think that is right, is it not, Mr. Irwin? It is wider?

Mr. IRWIN: I think it admits some things that are not qualified under the insurance rules, but it probably does not include some which would be acceptable under those rules.

Senator LEONARD: I should like to ask a question which arises out of my ignorance. Does this definition of "qualified investment" apply to pension plans that are not deferred profit-sharing plans, or is this a new definition that is designed for deferred profit-sharing plans?

Mr. IRWIN: This definition on page 27 applies only with respect to deferred profit-sharing plans.

Senator LEONARD: What is the situation with respect to other pension plans?

Mr. IRWIN: The law does not contain a set of rules regarding investments by registered pension plans. The law merely requires that pension plans must be accepted for registration by the Minister of National Revenue.

Senator LEONARD: Tell me why is there this difference? Why is this clause put into this bill to define "qualified investment" for a deferred profit-sharing plan when it does not apply with respect to other pension plans? Tell me some of the facts that go into the determination of this difference.

Mr. IRWIN: The measure before us addresses itself to deferred profit-sharing plans, and the amendments proposed are intended to deal with some situations which have come to light, and where it is believed these rules are necessary. The same situation has not arisen with respect to pension plans. To some extent, these are now subject to provincial supervision. Pension plans have been subject to registration for many years, and there have been over some periods in the past sets of rules published by the Department of National Revenue dealing with the investments which would be acceptable if a plan is to be accepted for registration.

The CHAIRMAN: There might be this factor, that in most pension plans the company undertakes to contribute what is necessary beyond the employee's contribution in order to maintain the fund and make it actuarially sound, and to continue it in that way. Many plans I have seen, and some that I have drawn up, define the company's obligation in that sense. So, if you have an assurance that the company is going to have to make up the difference you can be sure that there is going to be a pretty strict supervision of the investment policy.

Now, here the company makes the contribution and the employee is the beneficiary, and certainly in the working out of this—and this is one of the abuses that are being corrected by this bill—use might be made of the monies for investments that might suit those who control the plan but which would not be in the best interests of the beneficiaries of the plan who had no guarantee to fall back on. That may be an element, although I do not know.

Mr. IRWIN: Yes, I think it is important that the benefits promised by the two kinds of plans have been different. The pension plan has undertaken to provide a specific benefit to the employee. The deferred profit-sharing plan usually

only promises to put certain amounts aside each year for an employee and pay it to him at some time in the future. I would not like to say that it may not at some time become necessary to introduce stricter rules about pension plans, but the provinces have become very interested in this and have imposed controls in this field, and it does not seem to have become necessary for the federal Government to provide the kind of rules for pension plans that are now proposed for deferred profit-sharing plans.

The CHAIRMAN: Any other questions on this aspect? I think we have certainly hit the highspots on the deferred profit-sharing plans. If there are no further questions, would you take up next the amendments dealing with the Canadian Vessel Construction Assistance Act?

Senator KINLEY: All we are doing here is to repeal the provisions and to put them under the Income Tax Act.

The CHAIRMAN: Yes, but we do not put them all under the Income Tax Act. Having accepted the statement that we repeal the Canadian Vessel Construction Assistance Act we move over the beneficial provisions to the Income Tax Act where they most properly belong, and you are interested to see that we do not move all the beneficial provisions. Would you deal with that aspect, Mr. Irwin?

Mr. IRWIN: The Canadian Vessel Construction Assistance Act provides that there shall be accelerated depreciation at the rate of $33\frac{1}{3}$ per cent for the capital cost of a vessel constructed and registered in Canada. Secondly, the present Canadian Vessel Construction Assistance Act provides an exemption or freedom from recapture of capital cost allowance if the proceeds of disposition are used to acquire a new vessel within a seven year period, and the new vessel meets certain requirements of the Canadian Maritime Commission. Thirdly, it provides a deduction for tax purposes over a four year period of the estimated cost of quadrennial surveys required by the Canada Shipping Act.

The bill now before us will repeal the Canadian Vessel Construction Assistance Act. Ministers have given assurances that the rapid rate of capital cost allowance will be provided under regulations passed under authority of the Income Tax Act. The feature that excess capital cost allowance does not have to be recaptured will be cancelled, but a transitional period of eight years is provided, including 1966, in which the proceeds of disposition from vessels must be used in a method satisfactory to the Minister of Industry before 1974. The deduction for amounts set aside for quadrennial surveys is continued in the legislation now before us.

Senator KINLEY: After eight years there will be no recapture. If you use a vessel eight years there will be no recapture of the sale value.

The CHAIRMAN: There is a limitation. If you construct a vessel or start the construction after January 1, 1966, if you embark on the construction of a vessel after that date, you do not get this exemption from recapture. January 1, 1966 is the critical date. If you had started on it, or made a contract prior to that date, fine, otherwise you are subject to the ordinary rules of recapture.

Senator KINLEY: Then if you do not get the depreciation there is nothing to draw back; the vessel is free?

The CHAIRMAN: Yes. On fishing vessels the $33\frac{1}{3}$ per cent accelerated depreciation still applies; but the regular depreciation is 15 per cent—is that the regular, Mr. Irwin?

Mr. IRWIN: The regular rate is 15 per cent.

The CHAIRMAN: And taking that, and if you sell it at a gain, it is subject to recapture.

Senator KINLEY: And if you build a new vessel with the money you are all right?

The CHAIRMAN: No.

Senator KINLEY: If you have a vessel and you have that depreciation, and you build a new vessel, they will not recapture the depreciation, they will give it to you for the new vessel?

The CHAIRMAN: Those were the old rules.

Mr. IRWIN: Yes, that is the old rule.

Senator KINLEY: Then let them change the rules.

The CHAIRMAN: Well, it is changed from January 1, 1966. If you build a new vessel after that time, then you are subject to recapture.

Senator KINLEY: Is this just for fishing vessels, or also for merchant marine vessels?

Mr. IRWIN: All vessels as defined in the Canada Shipping Act.

The CHAIRMAN: Any other questions on this aspect? I think we have it pretty well in summary form.

Senator BENEDICKSON: Mr. Chairman, I was absent for a few minutes and I should like to ask if the necessity for this legislation and the requirement of it in the Income Tax Act is due to the fact that the Maritime Commission will go out of existence under the new legislation?

Mr. IRWIN: Not entirely, sir. This is part of the package. The Minister of Transport announced in January 1966 that the Government assistance for ship building had been reviewed and that a new plan would be introduced. As part of this new plan the subsidy program was changed and the provisions of the Canadian Vessel Construction Assistance Act regarding freedom from recapture were to be cancelled, but a transitional period would be allowed. Since it was necessary to amend the Canadian Vessel Construction Assistance Act it seemed sensible to put certain parts of this act into the Income Tax Act.

Senator KINLEY: Does that apply to the subsidy?

Mr. IRWIN: It will be under an appropriation bill.

The CHAIRMAN: There is an appropriation bill which provides for the subsidy.

Senator KINLEY: The subsidy is 50 per cent on a steel vessel, and I think it is 40 per cent or 45 per cent—

The CHAIRMAN: The 50 per cent on the fishing vessels is not changed, but there are some changes, or will be. The minister in making a statement on subsidies said:

It is the Government's intention to resume, effective January 1, 1966 subsidy payments on ship construction at a level of 25 per cent for a period of three years. This amount would then be gradually reduced by two percentage points annually until a subsidy level of 17 per cent is reached in 1972. This level is roughly equal to a 20 per cent tariff for the ship building industry.

Then he says that for fishing vessels the current 50 per cent rate will be continued.

Senator KINLEY: I see.

The CHAIRMAN: Could we move into the next item? It is important but does not require much consideration, it is the registered supplementary unemployment benefit plan. As you know, usually you find these as part of a labour contract. This takes care of a situation where a company makes contributions and the money is to be used to supplement any deficiencies in pay when a man is on half-time or out of work for a period.

The only change that has been made is that these plans, when this bill becomes law, will have to be registered. The idea of registration is to get a good look at what they are doing with the money in those plans—is that right, Mr. Irwin?

Mr. IRWIN: Yes, sir. For the most part, these plans have been set up as a result of employer-union negotiations, but the law does not restrict the plan to this kind of arrangement. We are concerned that the present provisions of the law may be capable of being abused. We do not know that they have been, but as the chairman has said, it seemed prudent to require these plans to be registered. They will have to file returns. It may be necessary to add to the law certain rules concerning their operations.

Senator KINLEY: How does this interfere with unemployment insurance?

The CHAIRMAN: It is quite apart from it.

Senator KINLEY: I know, but it is in addition to it?

The CHAIRMAN: In the field of employer-employee contracts, it is a matter of agreement, if the employers agree to do it.

Senator KINLEY: They do not have to pay any income tax on that money? They give that money out.

The CHAIRMAN: When the employer contributes it to the fund, there is no income tax. When the beneficiary receives it, there is.

Senator KINLEY: That means they can give this money out, in addition to his unemployment insurance, and he does not have to pay income tax; but they have to pay income tax when they get the money, which is all right.

The CHAIRMAN: Yes.

Those are the three main items in this bill. There are some items which are for tidying up. Is there any particular item any senator would like to ask a question on? Mr. Irwin, if you were asked to pick out any one of these items, which would you say is the most important single item, in tidying-up? Over in the other place, it was thought the most important was that of having to put one's social security number on the tax return, in addition to your name.

There may be a number of people with the same name but not with the same number.

Senator BENEDICKSON: What is the interest rate currently paid on overpayment of income tax before the refund is made?

Mr. IRWIN: Mr. Pook could answer this.

Mr. D. R. Pook, Chief Technical Officer, Department of National Revenue: The ordinary rate is 3 per cent; it is 6 per cent on moneys refunded as a result of overpayment.

The CHAIRMAN: If you are assessed and you appeal and your assessment is reduced and you have paid the money in the meantime, you get back the excess, with 6 per cent. If you make a straight overpayment, the refund carried 3 per cent. Isn't that right, Mr. Pook?

Senator LEONARD: Which you then show in your income form as income received?

The CHAIRMAN: That is right.

Senator LEONARD: So that reduces it again below the 3 per cent.

The CHAIRMAN: Is there any particular item? To me, they seem to be all tidying-up.

Mr. IRWIN: Yes, sir. It is difficult to say that one amendment is more important than another, as it depends on the taxpayer's circumstances.

In the discussion in the Senate, mention was made of the changes in what we call the provincial abatements flowing from the federal-provincial fiscal arrangement.

A change that may be of some importance is that it will no longer be possible to make tax-free transfers from pension plans, or from retiring allowances, into deferred profit-sharing plans. It will be possible to make a tax-free transfer from one deferred profit-sharing plan into another deferred profit-sharing plan if the receiving plan has five numbers.

The CHAIRMAN: If I took my money from a pension or retirement savings plan that would be taxable but if I invest in another plan immediately then there would be exemption, is that right?

Mr. IRWIN: That is right. That rule is not being changed. The only feature of that rule that is being changed is that where you want to take these proceeds and place them in a deferred profit-sharing plan—

Senator MACKENZIE: A moment ago we spoke of social security numbers. Is everybody in Canada liable to have one?

Mr. IRWIN: Not every one has a number now, sir.

Senator MACKENZIE: I have in mind those over 80.

Mr. IRWIN: The amendment proposed here in clause 21 is that every individual who is required to file a return for income tax purposes must obtain a social insurance number and use it on his return.

Senator MACKENZIE: Do you give the information as to how he gets the number?

Senator BAIRD: Has everyone got to have one?

The CHAIRMAN: Various Government offices have application forms with information as to how the number can be obtained.

Senator MACKENZIE: Are they any good to you when you get one?

Mr. IRWIN: It is necessary for purposes of administering the Canada Pension Plan.

Senator MACKENZIE: But that plan does not apply to people over 70.

Mr. IRWIN: It is valuable for a taxpayer, too, in the sense that it enables the Department of National Revenue to process his tax return more quickly and more efficiently.

The CHAIRMAN: So, if you want your return processed quickly, you will get yourself a number.

Senator MACKENZIE: How?

The CHAIRMAN: Apply.

Senator MACKENZIE: To whom?

Mr. IRWIN: Any office of the Department of National Revenue.

Senator MACKENZIE: I am not thinking of myself.

Senator KINLEY: They are advertised.

Senator MACKENZIE: Why should they have one?

The CHAIRMAN: We are getting into the realm of policy. What we are considering is a section of the bill which says that every individual who is required to file an income tax return is required, unless he has already been assigned a number, to apply to the Minister of National Health and Welfare in the prescribed form and manner for the assignment to him of a social insurance number. There is a penalty if he does not put his number on his income tax form.

Senator MACKENZIE: There is no indication there as to where he applies.

The CHAIRMAN: Yes, the Minister of National Revenue.

Senator MACKENZIE: Why not the Minister of National Health and Welfare?

The CHAIRMAN: Well, it would depend on—

Senator MACKENZIE: I mean this can be a real problem to a lot of people.

The CHAIRMAN: I do not think there is any problem, when they are applying for welfare payments.

Senator MACKENZIE: They are not applying for welfare.

The CHAIRMAN: They know what to do; here is the requirement of the law and they had better get busy on it.

Senator BENIDICKSON: This, of course, came up when discussions arose about registration with the Canada Pension Plan, and there were a number of people who expressed some apprehension about this being applied to income tax and other matters. In other words, there was the feeling that everybody in the country would be computerized. Conceivably, there would be a dossier in effect on everybody in the country and some civil servant, no matter where, could, by pressing a button, not only receive the information he was concerned with, about a person's age for security purposes or for the old age pension benefits or anything of that sort, but receive in the process information regarding practically every other personal fact in the record and history of the individual concerned. In other words, a civil servant might have access to all that information. Now, is that likely to be the result? I think there is economy in having a centralized computer, but there are a lot of people expressing some fears these days about this computer age in so far as the personal facts of the individual are concerned.

The CHAIRMAN: The minister gave some explanation in the Commons when he was questioned on that.

Senator BENIDICKSON: I am afraid I did not read those minutes.

The CHAIRMAN: Would you care to repeat that, Mr. Irwin?

Mr. IRWIN: Yes, sir. This was discussed at some length in the Commons and the minister emphasized that the introduction of this requirement concerning numbers did not detract in any way from the secrecy requirements of the Income Tax Act, and he made it as clear as he could that the situation, where one person could press a button and get all the information about a particular taxpayer, would not in fact exist. The information about income tax matters is kept separate.

Senator BENIDICKSON: He gave an assurance that any particulars with respect to income tax would be maintained by the collection and assessment section of the department, and there would not be any central dossier such as I referred to containing the information on a number of subjects?

Mr. IRWIN: That is correct.

The CHAIRMAN: He explained also that the computers which they have at the present time will function on numbers only. They have not got them to the stage where they will function reliably on names. There was some suggestion that when the machines they have are improved to the point where you can put these things on tape, then—and perhaps he did not imply this—you may not need a number. The indication was that part of it was the quality of computers which they had. Is that correct?

Mr. IRWIN: Yes, sir. The computers deal with numbers. It is of course possible to transfer a name to a number, but in Canada there are many people with similar or identical names. Also, names change upon marriage and people may simply change their names if they wish. What is required is a permanent, unique record for each taxpayer.

Senator SMITH (*Queens-Shelburne*): Can you tell us, Mr. Irwin, whether or not the application form necessary to complete in order to get a social insurance number is available at all the country post offices?

Mr. IRWIN: I cannot answer that definitely, sir. I do not know. I am informed that the forms are available at the district offices of the Department of National

Revenue. I am confident that a letter to any Government office asking for the forms or for information would be directed to the department handling these numbers.

The ACTING CHAIRMAN: Senator, I will get that information for you this afternoon.

Senator SMITH (*Queens-Shelburne*): The point that Senator MacKenzie raised is rather important.

Senator MacKENZIE: There are a lot of old people in this country who cannot read or write.

Senator SMITH (*Queens-Shelburne*): Ever since the system was first started it was on a voluntary basis and we were all sent the forms. I do not know where it came from: I just filled mine out and I have my card; but there are many people, particularly in rural areas although I would include even the cities, who will not know how to get numbers, or whom to ask; who do not know how to write letters or even how to write. Therefore, I think these forms should be available at all post offices.

The CHAIRMAN: What might happen is that if you send in a tax form not filled in in accordance with the requirements it might well be that the computer will throw it out, whereupon it will be returned to the taxpayer with some indication, I expect, as to why it was necessary to return it. But on the question of whether these forms are available in the post office, I can find that out and tell you this afternoon when we are sitting.

Senator SMITH (*Queens-Shelburne*): I do not particularly want to know. I just want to draw to the attention of the people who are going to have to process this new system that to my mind it would be perfectly simple to put something in the area where that social security number is to go on the income tax form to indicate that these numbers are available at the post office and at the Department of National Revenue. If you do not do that, a lot of people will be confused and angry with us for passing the legislation.

Senator HAIG: I think, if you announced this afternoon, Mr. Chairman, at the opening of the session just where we can get these numbers, that will satisfy everybody on that particular point.

Senator BENIDICKSON: Presumably we are not ready to indicate a system of accelerating the obtaining of these numbers, because this is the next legislation in the Canada Pension Bill which makes it desirable to have some national campaign, but again, presumably, Mr. Irwin, if this legislation passes it will be printed forms with respect to income in the 1967 taxation year that would be the first forms making it mandatory to have on the form the social security number.

Mr. IRWIN: Yes, sir. This would apply for the 67 returns which would, generally, be filed in the spring of 68. This point about availability of the numbers is a very important one, of course. I understand, however, that it has not been a problem up to now. I am told that nearly 90 per cent of taxation returns already do show the number.

Senator BENIDICKSON: Is there a question about the number on the form now?

Mr. IRWIN: There is a place where it is to be inserted on the present form.

Senator BENIDICKSON: How long has that been on the form?

Mr. IRWIN: Two years, I believe.

The CHAIRMAN: Are there any other questions you want to ask on this bill?

Senator LEONARD: I think we ought to put this bill through now.

The CHAIRMAN: Shall I report Bill C-259 without amendment?

Hon. SENATORS: Agreed.

The committee adjourned until 2 o'clock this day.



First Session—Twenty-seventh Parliament

1966-1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 41

Complete Proceedings on Bill C-190,
intituled:
"An Act to amend the Bank of Canada Act".

MONDAY, MARCH 20th, 1967

WITNESSES:

Bank of Canada: J. R. Beattie, Deputy Governor and G. K. Bouey, Adviser.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Paterson
Aseltine	Gershaw	Pearson
Baird	Gouin	Pouliot
Beaubien (<i>Bedford</i>)	Haig	Power
Beaubien (<i>Provencher</i>)	Hayden	Rattenbury
Benidickson	Irvine	Reid
Blois	Kinley	Roebuck
Bourget	Lang	Smith (<i>Queens-</i>
Burchill	Leonard	<i>Shelburne</i>)
Choquette	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Cook	Macdonald (<i>Brantford</i>)	Vaillancourt
Croll	Macnaughton	Vien
Dessureault	McCutcheon	Walker
Farris	McDonald	White
Fergusson	Molson	Willis—(47)
Flynn	O'Leary (<i>Carleton</i>)	

Ex officio members: Brooks and Connolly (*Ottawa West*)

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Friday, March 17th, 1967:

"Pursuant to the Order of the Day, the Honourable Senator McDonald moved, seconded by the Honourable Senator Beaubien (*Provencher*), that the Bill C-190, intituled: "An Act to amend the Bank of Canada Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Smith (*Queens-Shelburne*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

MONDAY, March 20th, 1967.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2.00 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Pro-vencher*), Cook, Flynn, Gelinas, Gershaw, Gouin, Haig, Irvine, éinley, Leonard, McDonald, Power, Smith (*Queens-Shelburne*), and Thorvaldson. (15)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Leonard it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-190.

Bill C-190, "An Act to amend the Bank of Canada Act", was read and considered.

The following witnesses were heard:

Bank of Canada:

J. R. Beattie, Deputy Governor.

G. K. Bouey, Adviser.

On Motion of the Honourable Senator Haig it was *Resolved* to report the said Bill without amendment.

At 3.10 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

MONDAY, March 20th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill C-190, intituled: "An Act to amend the Bank of Canada Act", has in obedience to the order of reference of March 17th, 1967, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Monday, March 20, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill C-190, to amend the Bank of Canada Act, met this day at 2 p.m. to give consideration to the bill.

Senator **SALTER A. HAYDEN** in the Chair.

The **CHAIRMAN**: I call the meeting to order. We now have to consider Bill C-190. I wonder whether in the circumstances the committee feel we should have a *Hansard* report of the proceedings.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The **CHAIRMAN**: We have with us Mr. J. R. Beattie, Deputy Governor of the Bank of Canada. Would the committee like to have a general statement of the intent and purposes of these amendments? We also have Mr. G. K. Bouey here as an adviser.

Mr. J. R. Beattie, Deputy Governor of The Bank of Canada: Mr. Chairman, a general statement regarding the proposals in the bill can be very brief and straightforward. The proposals cover, first, the general position of the central bank within the broad framework of Government policy. There are some amendments relating to the technical powers with regard to the operation of monetary policy, and there are some quite minor matters of housekeeping, some dealing with clauses which have become anachronistic or which are no longer relevant.

The amendment relating to the position of the central bank within the broad framework of Government policy is the one which occurs in clause 6 of the bill, C-190, which lays down certain conditions regarding the relationship between the minister and the governor with respect to consultation, and which gives the minister the power to issue a directive to the governor after further consultation and with the approval of the Governor in Council, and lays down conditions under which it shall be made public immediately.

This amendment, in our opinion, does not change the basis on which things are operating, and have been operating, but it gives it clear legislative recognition. We do not regard this as detracting from the ability of the central bank to operate without being subject to day-to-day political pressure, but it recognizes something that has always been recognized by the bank, and that is that in a democratic country the Government must be satisfied with monetary policy, and if there is any difference of opinion between a government and the bank, the view of the Government must prevail with appropriate conditions for publication in regard to any differences that there may be.

I would regard this amendment really as removing any possible future grounds for doubt about the relationship rather than as changing the relationship.

The CHAIRMAN: This means that the minister before he issues a directive must consult with the governor?

Mr. BEATTIE: That's right. It provides for a sort of second degree of consultation between them before the directive is issued. The amendment makes it clear that normal consultation should go on all the time.

Senator THORVALDSON: In regard to Senator Hayden's question, the bill provides for an order in council, and the directive must be covered by an order in council.

The CHAIRMAN: This is after and as a result of consultations, as I understand it. If the minister and the governor are not in agreement, then it goes from the minister to the Governor in Council, and the directive is issued by the Governor in Council.

Mr. BEATTIE: The minister may, after consultation with the governor and with the approval of the Governor in Council, give to the governor a written directive concerning monetary policy.

Senator THORVALDSON: The directive would have to be supported by an order in council.

Mr. BEATTIE: And the directive must be in specific terms and applicable for a specified period.

Senator LEONARD: Mr. Chairman, while Mr. Beattie indicates this is rather declaratory of the situation, in point of fact, going back to 1934—was it?

Mr. BEATTIE: In 1934 the Bank of Canada Act was enacted.

Senator LEONARD: —there was a very strong feeling that monetary policy should be under the control of the Bank of Canada rather than under the control of the Government of Canada; and did not successive Ministers of Finance more or less indicate that monetary policy was a matter for the Bank of Canada rather than for the Government?

Mr. BEATTIE: 1934 is quite a long time ago.

Senator LEONARD: Before your time—not before mine though!

Mr. BEATTIE: I am old enough to recall that quite clearly, because I started working in the bank very early in 1935, and I read in *Hansard* the debates of 1934; and, of course, I have read with close attention any debates ever since referring to the Bank of Canada. I think, to the extent the idea you mentioned was current at that time, it stemmed from the views of the Macmillan Commission, and particularly those of the chairman of that commission. The whole theory of the relationship between the government and the central bank was undergoing change through the thirties. Indeed, a great many things changed during that period. All I can say is that as far as the people inside the central bank were concerned, from the beginning we felt that if there was any conflict between the Government and the central bank, in a democracy, the view of the Government had to prevail. The only question was whether there was adequate provision made to discuss out the differences so as to be sure each side understood the viewpoint of the other, and that whatever position was arrived at was made known publicly rather than be a kind of an under-the-table matter.

Senator LEONARD: I am not at all disagreeing with this section or the policy that is set out, which I think is a correct one, but I do think there was some doubt as to whether that was, in point of fact, the intention in the first instance and for some years thereafter. Does it not also probably follow that if there is a real disagreement between the Governor of the Bank of Canada and the Government on policy, and this section is brought into effect, it would be very difficult for the Governor of the Bank of Canada not to resign if he felt the policy that was now to be forced upon him was one which he did not believe to be in the best interests of the country?

Mr. BEATTIE: Yes, I think that is right, if in fact there has been an adequate chance to make sure each side understood the position of the other.

Senator LEONARD: I think we should make it perfectly clear it is not just a case of the Governor automatically saying, "True, we had a disagreement which has all been settled, because the Minister has told me what to do."

Mr. BEATTIE: We have always felt the view of the Government must ultimately prevail when everything has been taken into account, but by the same token we have never felt the Governor could take refuge behind this.

Senator LEONARD: If it was a highly inflationary policy in his view at the time, then he would certainly have to give consideration to whether or not it was sufficiently serious that he should resign, making a public issue of it.

Mr. BEATTIE: Yes.

Senator THORVALDSON: Actually, the Porter Commission on Banking and Finance deals with this whole matter quite extensively, and I recall the paragraph which suggests that if a directive were ever issued by the Government it would involve, as a matter of course, the resignation of the Governor; and it is very likely the Governor of the Bank would decide that he should resign. If I recall aright—and I was reading the commission's report just last week—something like that was in that section.

The CHAIRMAN: Senator Thorvaldson, I would think that if you got to the stage where an Order in Council, a directive in the form of an Order in Council was issued, that is a negation of the position, and whatever authority the Governor may have, there is nothing else he could do but resign.

Senator THORVALDSON: I think that is the position taken by the Porter Commission.

Senator LEONARD: That is really what Mr. Beattie has said.

Mr. BEATTIE: Yes, although I would not think that if at any time a directive were issued it would automatically cause the Governor to resign.

Senator THORVALDSON: I did not mean that. I meant that the Governor should resign; not the Government.

Mr. BEATTIE: Yes, the Governor. I do not think it would be absolutely automatic, but I think the presumption would be very strong that he would want to.

The CHAIRMAN: Yes, but if it gets to the stage of an Order in Council directive it means that the Governor in consultation has refused to subscribe to the view of the Minister?

Mr. BEATTIE: That would be the interpretation to take.

Senator COOK: There may be alternative courses that could be taken, and perhaps the Government would decide on no course. You could do it one way or another.

The CHAIRMAN: But the section says that if there should emerge a difference of opinion between the Minister and the bank concerning monetary policy then that is when you go on to this Order in Council directive.

Senator THORVALDSON: Mr. Beattie, it really declares the principle that the Government is supreme in both fiscal and monetary policy, does it not. It says that in the last analysis the Government must be supreme. In other words, if the bank has the final say in monetary policy it would be, as I think was said by the Porter Commission, a state within a state. The bank would be a state within a state were it allowed to be the final arbiter of monetary policy.

The CHAIRMAN: I am afraid I got you off into this discussion, Mr. Beattie. Do you want to continue your statement?

Mr. BEATTIE: Well, dealing with the question of monetary techniques, or techniques of monetary management, the most important revision being proposed is to replace the power which the central bank presently has to vary the cash reserve ratio with a power to impose and vary a secondary reserve ratio which would consist of treasury bills and day to day loans. I will be glad to explain the reason for this as best I can if the members of the committee wish me to do so.

The CHAIRMAN: Yes, would you?

Mr. BEATTIE: Perhaps I might go back and explain basically how the central bank tries to bring its influence to bear on the financial system. Its normal means of speeding up or slowing down the rate of growth of chartered bank loans, which is, I think, the ultimate thing it is aiming at, is through its power to set the cash reserves of the chartered banks as a group from day to day. At the end of each day we make certain decisions that establish the total amount of cash reserves that all the chartered banks taken together have for the next day. We can vary from day to day in such a way as to exert the kind of influence we feel would be appropriate.

Senator THORVALDSON: That means, Mr. Beattie, that the banks report to you every day as to their cash—

Mr. BEATTIE: They keep their cash reserves with us, and we see this in our own accounts each day. Each day we know what their cash reserves are, and each evening we make residual transactions which establish what the reserves of the whole system will be for the next day.

Senator LEONARD: And the minimum is eight per cent, is it not?

Mr. BEATTIE: The present minimum is eight per cent.

Senator LEONARD: They must keep on deposit with you as a cash reserve eight per cent of their liabilities?

Mr. BEATTIE: Yes, plus their holdings of notes which are defined in a certain way, and they have to meet this on a calendar monthly average.

Senator THORVALDSON: Would you qualify what that eight per cent is? It is eight per cent of what? Is it eight per cent of their notes plus deposit liabilities—

Mr. BEATTIE: It is eight per cent of their total Canadian dollar deposit liabilities—total liabilities expressed in Canadian dollars.

Senator LEONARD: So if a bank has \$100 million of deposit liabilities then not less than eight per cent of that would be on deposit with you?

Mr. BEATTIE: Yes, on the average over the calendar month. Now, a bank that has more than \$8 million with us on the average over the month will have an incentive to use some of that cash, to invest it in short term securities or other securities, or even to make loans because excess cash earns no interest, and almost anything else they can acquire will earn them interest. Their interest is to maximize their earnings. So, there is an incentive to invest surplus cash. Of course, if they are running short of the eight per cent they have to realize upon some of their other assets in order to build up their cash. This is the mechanism that keeps us in touch with their operations on the average over the month.

Senator THORVALDSON: In what form are those deposits made, having reference to that 8 per cent. Would that be in the form of bonds or clearances?

Mr. BEATTIE: The sum of their holdings of currency, Bank of Canada notes, plus their deposits.

Senator LEONARD: Deposits in the Bank of Canada?

Mr. BEATTIE: Yes, which bear no interest.

Senator McDONALD: Is there any intention to pay interest on these deposits?

Mr. BEATTIE: No. The amendment which is made applies only to accounts of foreign central banks and international organizations. The failure to pay interest is really a key factor in the relationship here. It is because the chartered banks earn no interest with us that they buy other bonds, or loan.

Senator LEONARD: Is there a bar against your allowing interest to the banks, or would it be possible to allow interest without a statutory amendment?

Mr. BEATTIE: We have no power to pay interest on such accounts under the present act or the proposed one, except in the case of central banks of other countries or official international organizations.

Senator THORVALDSON: In fact, was that not one of the objections of the chartered banks originally when the bill was enacted? I think I recall that they felt they were being done badly by in not getting interest on that. Am I right or wrong?

Mr. BEATTIE: I have not a specific recollection, but I am sure that is the way they did feel, and the way I would feel if I were a chartered banker; but the fact is that this is a key feature of central bank technique in every country in the world. If it paid interest, there would not be adequate incentive to the chartered banks to employ the surplus funds in other ways.

Senator LEONARD: And of course there is a difference when interest goes above 6 per cent in a bank.

The CHAIRMAN: Any other questions on that point? I notice on page 5 of the bill you refer to subsection (3) of section 72 of the Bank Act. It does not correspond with the section in the present act?

Mr. BEATTIE: No, there has been a revision in that act as well.

The CHAIRMAN: So that is another reason that we must pass the Bank Act—to get this straight?

Mr. BEATTIE: Yes, I think so.

The CHAIRMAN: Now the second point?

Mr. BEATTIE: This primary reserve framework enables the central bank to control the rate of growth of the chartered banks' total assets and liabilities. The rate of growth in these totals normally influences the chartered banks lending policies in the direction of liberalization if the increase in total assets is speeding up, and in the direction of restraint if it is slowing down. However, the leverage on loans is likely to be only partial and to operate with some lag. That is another way of saying that the chartered banks lending policies are likely to be changed only gradually. If their total assets growth is speeding up banks will tend to increase their liquid assets as well as their loans. They are always happy to improve their liquidity position if they can, consistent with carrying out their lending policies or easing them somewhat. However, they hardly ever ease them commensurately with the change in the growth of total assets.

Senator THORVALDSON: When you refer to liquid assets vis-a-vis loans, what do you mean?

Mr. BEATTIE: As distinct from loans, it includes almost everything but loans. The principal forms of it, apart from cash with the Bank of Canada, are Treasury bills, day loans, Government of Canada bonds, call loans, and other types of securities.

Just as the banks will not fully reflect a step up in the rate of increase in their total assets in a step up in their lending policies, if the total of the growth is slowing down, the banks are likely to adjust their lending policies in the direction of restricting them, with some lag.

In this case the bank would finance some part of the growth in its loans by selling off some assets to tide it over in the meantime.

This kind of partial response, with a lag, is the kind of thing that one counts on, and allows for, and is quite tolerable in ordinary circumstances. But there come situations in which it would be desirable, for instance, to exert restraint over bank lending more quickly than would be possible by relying solely on the cash reserve management technique that I described first.

It might be desirable, also, to minimize the effect on market rates of interest which would result if the Bank of Canada were applying a serious cash squeeze and the chartered banks were having to sell securities in large volume in order to avoid changing their loan policy, which probably would be operating in the face of a very strong loan demand under those conditions.

Under the existing legislation, the Bank of Canada could try to deal with a very unusual condition of this kind, by invoking its power to increase the minimum cash reserve ratio from 8 per cent to some higher per cent.

This would force the banks to sell some of their liquid assets, to convert them into cash. In effect, it would impound chartered banks' liquidity, and this would tend to have the more restraining effect, with less increase in interest rates than if we relied on the normal cash management technique. But it would have the incidental effect of reducing chartered banks' earnings quite substantially; they would have to convert an earning asset into something that had no earning attached to it at all, in other words, deposits with us or notes in their tills.

The CHAIRMAN: If the bank had less money as the result of that, or less ability to make loans as the result of such a policy, would not that have the effect of increasing interest rates?

Mr. BEATTIE: Yes, but if this technique were applied, you would not have as much repercussion in the bond market from banks having to sell securities in large volume in order to make loans. This would be a way of short-circuiting the attrition process which normally would be involved in trying to gain the objective through the traditional cash management techniques.

The change that is proposed in this bill is to replace our present power to vary the cash reserve ratio with a power to impose and vary a secondary reserve ratio requirement, that is, a requirement to hold treasury bills and day loans to money market dealers in certain amounts.

This would provide an alternative means of impounding chartered bank liquidity but would enable them to earn some moderate rate of return on the liquidity that was so impounded.

It would have very nearly the same impact on their lending policies but not so harsh an impact on their earnings.

The CHAIRMAN: It would slow up the economy.

Mr. BEATTIE: I will not say it would necessarily slow up the economy. It might taper down the rate of increase. That is nearly always the question, because certainly in relation to the money supply the normal thing to expect is some rate of increase. The only question is, "How large a rate of increase?" And when so-called restrictive policies are being applied, their objective normally is just to reduce the rate of increase to a more sustainable level.

The CHAIRMAN: That may have the effect of transferring more into the street.

Mr. BEATTIE: It may. That is the way the market operates.

Senator McDONALD: It may have the effect of what?

The CHAIRMAN: It may have the effect of getting more of that business which is looking for money to go to the street, if they cannot get it at the bank.

Senator THORVALDSON: Mr. Chairman, I notice that in some explanatory notes in the bill this is referred to as a new method of dealing with reserves—that is, by establishment of these secondary reserves. I was wondering if you are

following something that has already been done before, say, by the Bank of England or the federal reserve Board or by banks throughout the world, or are you breaking new ground in central banking techniques?

MR. BEATTIE: No. This is not a new technique. It is not one that is available to all central banks, but the Bank of England has power to do what they describe as calling up special deposits, which mechanically is the same thing as this. They are able to say to the clearing banks, "You deposit with us an additional amount equal to one per cent or two per cent of your total deposits and we will give you a rate of return which is roughly comparable to the rate of return on, for example, treasury bills or money market loans."

It is mechanically equivalent in its effect on their lending policies to this secondary reserve requirement embodied in bill C-190.

This kind of power is becoming increasingly common because countries are coming to expect increasingly high standards of economic behavior and management, while with capital markets becoming more open the effect of developments outside a country are communicated all round the world with greater speed than used to be the case, and particularly in the case of smaller countries like Canada the scale of the job that has to be done sometimes is rather great and it is helpful to have these supplementary techniques available, although we would hope that we would not have to use or have to rely on these to any great extent.

It would be only in unusual situations that variations in the secondary reserve would be contemplated by the Bank of Canada.

SENATOR LEONARD: Mr. Beattie, have you not been operating in somewhat this way by co-operation with the banks in respect of the secondary reserve, in any event, for some years?

MR. BEATTIE: There has been an agreement in force since early 1956 on a minimum secondary reserve ratio.

SENATOR LEONARD: Yes.

MR. BEATTIE: But it has never been varied. The new thing here is that there is power to vary the secondary reserve requirement as well as to impose it by statute.

SENATOR LEONARD: Do I understand from what you have said that the power to change the primary reserve from 8 to 9 per cent has been taken away and this substituted? So now the primary reserve is being fixed at 8 per cent, is it?

MR. BEATTIE: It has been fixed at 4 per cent on term and notice deposits and at 12 per cent on demand deposits. There has been a reduction of the average minimum cash reserve required. This new minimum works out to about 6.6 per cent on average as compared with the present 8 per cent, although it is split between the two broadly different kinds of deposits. We are giving up the power to vary that 8 per cent between 8 and 12, and it is proposed we should have the power to impose and vary a secondary reserve requirement between the limits of six and 12 per cent.

SENATOR THORVALDSON: This bill makes 8 per cent the maximum?

MR. BEATTIE: This bill washes out the cash reserve requirement variability entirely and substitutes for it the power to vary the secondary reserve ratio between limits of six and 12. The present agreement which has been in force for over 10 years was at a constant 7 per cent.

SENATOR LEONARD: Where do you get the minimum of 4 per cent on the deposits?

MR. BEATTIE: Well, this is in the Bank Act, section 72. We have no power to change that in any way. We have given up our power in that respect.

SENATOR SMITH (*Queens-Shelburne*): Several times you have mentioned this agreement with regard to some amendments in secondary reserves being in

force. This whole arrangement you have been operating under was a voluntary agreement, was it not?

Mr. BEATTIE: Yes, I should have said it was in effect or in operation rather than in force.

Senator SMITH (*Queens-Shelburne*): What else do you carry out on the voluntary system without imposing certain actions on various banks?

Mr. BEATTIE: I am not aware of any other voluntary agreements of this kind at the present time. Occasionally when you get into emergency conditions, and all the other mechanisms and methods you have available to you are not quite equal to the job, there may be an attempt to work out some kind of an agreement with the chartered banks. This has happened on rare occasions in the past.

Senator SMITH (*Queens-Shelburne*): In the past has the Bank of Canada ever gone to the chartered banks and pointed out difficulties of a particular situation and suggested that it would be in the general public interest if they would restrict their loans to the same ratio or the same amount they have done in some past period? Have you done things of that kind?

Mr. BEATTIE: There have been a few instances of this. The one I recall most clearly occurred at the time of the Korean War when conditions at the end of 1950 or, perhaps, in January of 1951 were such that the governor had several discussions with the chartered banks, and there was no disagreement among them about the diagnosis of the situation or the desirability to restrain the growth of bank credit as much as they could. At that time tentative targets were worked out which were in effect for, I would say, about nine months. But this is the kind of thing that is only possible in an emergency situation, and it is not the kind of thing that can last very long, because too many roughnesses and inequities turn up in it. It is kind of supplementary action that all the people involved are occasionally driven to attempt.

The CHAIRMAN: It is not good for the long haul?

Mr. BEATTIE: It certainly isn't. A matter of some months is about as much as it is usually good for.

Senator THORVALDSON: I notice throughout the Bill C-190 there are some sections which refer to the Quebec Savings Banks Act, for the first time. Is that a new development in regard to this? Is there a new relationship created between the central bank and the banks under the Quebec Savings Banks Act?

Mr. BEATTIE: No, the Quebec Savings Banks Act is put in italics in the explanatory notes because it is the title of legislation and not because there is any change in relationship. As far as I know this legislation is exactly the same in regard to the Quebec savings banks.

Senator THORVALDSON: I have another question. When you refer to emergency situations, would it be right to say that the central bank had an emergency situation in May or June 1965, when the Atlantic Finance Corporation got into trouble? Would you call that an emergency situation?

Mr. BEATTIE: No, I do not think I would describe it that way, Senator Thorvaldson, although it was a somewhat uneasy time for the financial markets and during that time we provided quite adequate cash reserves and the banking system found itself in a position where it was able to accommodate demands for loans from financial institutions to a greater extent than might have been expected if you had been looking only at the underlying economic situation and the developing upward pressure in costs and prices that was occurring during that period. But we felt this other consideration was an overriding one for the short time that was involved.

Senator THORVALDSON: I recall there were news reports at the time that the central bank was acting in the Atlantic situation.

Mr. BEATTIE: We did not want the banks to be in a position where they felt they had to refuse accommodation to credit-worthy financial institutions just by reason of lack of resources. The banks did co-operate very well in keeping things on an even keel at that time.

The CHAIRMAN: Are there any other questions on this aspect? Are you satisfied with the explanations on secondary reserve, Senator Leonard?

Senator LEONARD: I just want to get clear in my own mind as to the correlation between the primary reserve, which is now 4 per cent, under the Bank Act and this reserve. Adding this together, does it require a primary and a secondary of a minimum of 10 per cent and a maximum of 16 per cent?

Mr. BEATTIE: The 4 per cent only applies to part of the bank's deposits. The average over the whole of the bank's deposits is about 6.6 or 6.7 per cent. That may vary in the future as the proportions change between demand deposits and others.

Senator LEONARD: They are not computed on the same basis?

Mr. BEATTIE: No.

Senator McDONALD: Is the 6.6 per cent now comparable to the old 8 per cent?

Mr. BEATTIE: Yes.

Senator McDONALD: What would be the maximum, if 6.6 is the minimum?

Mr. BEATTIE: 6.6 is it under the new act. There is no power to vary that, though it will vary slightly because it is the average of demand deposits at 12 per cent and others at 4 per cent. As the proportions in the bank's deposits change, the overall average will change slightly, but we will have no power to change the 4 per cent or the 12 per cent.

The CHAIRMAN: The 6.6 per cent is not necessarily constant?

Mr. BEATTIE: No, it may shift. It is more likely to shift down than up, I think, because the 4 per cent ratio will be slightly more advantageous to the banks in competing for term and notice deposit money.

The CHAIRMAN: It is a plus in their efforts to get money other than the regular deposits on a term basis. They may have to pay more for it, but they get some compensation in the difference in the rate.

Mr. BEATTIE: They do not have to leave so much of it earning no interest as they did before. Before it was 8 per cent in that particular category of deposits.

The CHAIRMAN: Have you any further questions on that, Senator Leonard?

Senator LEONARD: Apart from the secondary reserves, I have something to ask.

The CHAIRMAN: Is there any further information you want on secondary reserves?

Senator LEONARD: No.

Mr. BEATTIE: The next matter of an operating technique character is the change which is proposed, not in Bill C-190 but in section 72 of the Bank Act, under which the chartered banks can be required to make this reduced minimum cash reserve ratio in each half of the month separately, rather than just over the month as a whole, as they do now.

The situation now is such that an individual bank can run on a cash ratio well above the minimum, or well below the minimum, for quite a number of days at a time, and still reach the average without too much difficulty because the averaging period is quite long, namely, a month. This creates a situation in which the response of the system as a whole to the level of cash reserves that we set from day to day is very much weakened. Indeed, the reaction can be the opposite of what we expect, because if one bank is maintaining a cash reserve of,

say, 8.5 per cent and we set the ratio for a given day at, say, 8.08 per cent, the ratio of the system, apart from the one bank having 8.5 per cent, will be below 8 per cent, and those banks will feel as if they are in a quite tight cash position, and will react accordingly.

By the same token, if a bank, and particularly a large bank, runs its cash ratio well below 8 per cent—say, 7.5 per cent—then the rest of the system may feel very flush without us intending that to be the situation, and there will be the kind of reaction from the system in the market during the day, and over the days, of a different character from what we have been aiming at.

The reason for this is that the bank which is deliberately running a high ratio or a low ratio knows what it is doing, and when it has this very high ratio it is not putting money back into the market. It is not getting rid of the cash in the way that one would expect when it has surplus cash, so that the market is not getting any help from that bank. On the other hand, the market is having to supply money to the banks that are short and, therefore, you get an unduly tight feeling in the market—more tight than is our intention when we are setting the cash ratio from night to night.

In the same way, if one bank is running away below 8 per cent deliberately it does not take any action to correct that situation by calling day loans or by selling treasury bills, whereas the result of its action on the other banks is that they have a surplus of cash and they do not know but what this is what we intended for them, so they tend to act as if the situation were very easy and to invest in day loans and purchase treasury bills, thus creating a greater impression of ease in the market than that at which we were aiming.

Each bank has to work its ratio out to something close to 8 per cent over the month. It cannot go below, and if it goes much above then it is losing earnings or wasting earnings. But, it may go much above day after day after day in the early part of the month or in the middle of the month, and still average down to a ratio of close to 8 per cent at the end, or go away below and come up later in the month. The trouble with this is though cash ratios always average out in the end, the responses do not. When this happens you do get different responses from the market than those at which the central bank is aiming. You may say that we ought to be able to foresee what the surplus bank or the deficit bank is going to do, but we never do know that from day to day. We cannot very well call them up and ask them what they are going to do tomorrow. That would not be consistent with the kind of market operation we have always had, and which we aim at. So, each night when we set the cash ratio for the system as a whole we pretty well have to assume that the banks that are very high are going to come back to the target, or that the banks which are very low are going to come up to the target. When they do not do that then the next day the system does not react in the way we expect it to, and our monetary operations do not turn out in the way we expect or wish them to.

The CHAIRMAN: The change here will give you a check twice a month?

Mr. BEATTIE: It will somewhat reduce the scope for an individual bank to run away above or away below without any perceptible effect on its earnings, and therefore will make the operation of monetary policy a little more predictable and smooth than it can be under present conditions.

Senator LEONARD: And if this did not work they could come back and make it ten days, I suppose?

The CHAIRMAN: You will have to be careful that sooner or later the banks will not be spending so much time accounting to the Bank of Canada that they won't have time to make money.

Mr. BEATTIE: Well, in the United States the twice monthly average would not be regarded as too severe, because there the large city banks have to maintain their minimum cash requirements on a weekly average. Indeed, in

London they have to maintain the ratio each day. But the problem you mentioned, Senator Leonard, can be considered say nine or ten years from now, presuming that Bill C-190 has passed.

Senator LEONARD: Mr. Chairman, Senator Roebuck made some remarks on second reading of the bill last week that I myself felt should be brought to Mr. Beattie's attention. I do not know if he had an opportunity of reading those remarks.

Mr. BEATTIE: No, I have not, sir.

Senator LEONARD: I understood that Senator Roebuck wanted to put the same kind of question when the bill came up in committee, and that when he was here this morning he was under the impression that we were going to deal with this bill this morning, but he left without knowing that we were going to deal with it this afternoon. I do not want to try to put his question if Mr. Beattie did not read it, but I was rather concerned myself to have the Bank of Canada explain the matter he was raising, which was really a question of currency rather than a question of the Bank's cash reserves. Are we going to try to sit later, Mr. Chairman?

The CHAIRMAN: It depends. I have arranged so that the signal will not go until ten minutes after three.

Senator LEONARD: I will try to put Senator Roebuck's point to Mr. Beattie, because I would like to see his statement on the record, anyway. Senator Roebuck seemed to be concerned about the amount of currency as distinct from our other money, our bank deposits or reserves, and he raised some question as to the amount of additional currency, that we now have so much more currency in circulation than we had a few years ago, and his concern was—I think he did actually use the word "printing press"—as to whether there was not some temptation on the part of the Government because it could print money. Your name appears on all of them, Mr. Beattie, so you have to answer for your signature. I thought perhaps you would be good enough to put on the record the kind of controls and checks that govern the amount and issue of currency in the country.

Mr. BEATTIE: The amount of currency in circulation in the hands of the public is something really beyond our control, determined by the desire of the public to have money that can pass from hand to hand, rather than by writing a cheque. We meet that demand, in effect, by having notes available, which the chartered banks can buy from us and use to pay their depositors who want to make a withdrawal in currency.

The currency component of the total money supply is a relatively small one.

Senator LEONARD: What percentage is it?

Mr. BEATTIE: Slightly more than 10 per cent of the total. The currency in circulation is about \$2½ billion and the total amount of bank deposits and currency in the hands of the public is somewhat over \$20 billion.

Senator SMITH (*Queens-Shelburne*): What would those figures have been five or ten years ago, roughly?

Mr. BEATTIE: Quite a bit less. I can give you the figures in a moment.

Senator LEONARD: Instead of my own question, may I put Senator Roebuck's remarks, now that I am here. He was dealing particularly with one change in phrasing, and this is reported at page 1679 of Senate *Hansard* on March 17. He

was dealing with the change which took out those words "payable to bearer on demand" and he said:

All I see in the change is that in future it will have a right to issue notes, and previously it had the right to issue notes "payable on demand". What is the difference?

Apparently this bill will give to the Government a greater power than it had before with regard to the issue of currency. As Senator Thorvaldson has so well said, there is a danger at least of the monetary policy being guided by the interests of the party in power, the government, rather than by the needs of the people.

Are we by this bill getting closer to making monetary policy a matter of government exigency than it was previously? It has been bad enough, but does this make it worse?...

...One would not wish to confuse these two points, but in this instance, the issuance of government notes is a loan to the government without interest. Undoubtedly, the administration—and I do not care which party is in power—does not have to pay interest. They do not have to sell bonds, they simply print the money and pay their debts with it. Are we making the situation worse or better by these changes?

Mr. BEATTIE: There are two interesting questions there. On the first one, relating to the elimination of the phrase "payable to bearer on demand", I think this has no practical effect at all. The phrase "payable on demand" has reference to a provision in the original Bank of Canada Act which obliges the Bank of Canada to redeem its notes in gold on demand. But there was also a provision in the act which enabled the Government, by order-in-council, to suspend that requirement, and the requirement has been in suspension ever since. So the Bank of Canada has in effect never had to pay out gold on demand against the notes. That is what is referred to.

Senator THORVALDSON: Since 1934.

Mr. BEATTIE: Since 1934. Never at any time has the Bank of Canada had that obligation as an operational fact. It has been there in theory but it has been suspended each year. This provision washes out what now appears to be an anachronism. There are very few countries in the world which are able to have a currency that is redeemable in gold on demand.

The second question relates to the matter raised earlier regarding the issuance of notes. In my mind, this is a kind of mechanical response on the part of the central bank to the desires of the public to have Bank of Canada notes rather than a deposit in a bank. We have to accommodate ourselves to that. The total holdings by the public of currency is only a bit more than one-tenth of its overall holdings of money. The variations in it are in some respects quite fortuitous. They depend on a hold-up in the mails or a strike or bad weather or any kind of fortuitous thing which can increase or diminish the demand for hand to hand currency in some part of the country at some time.

The CHAIRMAN: Is there a standard as a result of which you would at some time put more notes in and at another time take more notes out of circulation?

Mr. BEATTIE: No, we are completely passive in this respect, Senator Hayden. The notes are there for the chartered banks to get from us and to pay out to their customers, if their customers want to hold notes rather than a deposit with a chartered bank.

Senator LEONARD: In the first place, it is not the Government which issues the notes at all; it is the Bank of Canada.

Mr. BEATTIE: That is right.

Senator LEONARD: On the question whether or not there is a profit involved for the Bank of Canada, is there a profit as between—

Mr. BEATTIE: Yes, there is, because we do not have to pay any interest on this obligation, and we do have assets against it.

Senator LEONARD: And you have all the expenses.

Mr. BEATTIE: We have the earnings from the assets and the cost of it.

Senator LEONARD: Is the only control on the quantity the extent to which the chartered banks themselves ask you for the currency?

Mr. BEATTIE: That is right and that depends basically on what the public asks the banks for.

Senator LEONARD: Otherwise you do not keep a stock of currency on hand beyond the normal demand of the public for currency.

Mr. BEATTIE: We always have a very large stock on hand.

The CHAIRMAN: Would they have an inventory?

Mr. BEATTIE: We always have a large inventory on hand, because, well, notes are rather expensive things to move around.

Senator LEONARD: I want it clear that there is no incentive upon you to distribute them out to the public.

Mr. BEATTIE: Well, we could not distribute them to the public except to the extent that the public wanted to hold them.

Senator LEONARD: They would come right back.

Mr. BEATTIE: They would come right back, yes.

Senator LEONARD: In the form of bank deposits with you.

The CHAIRMAN: When the banks say they want so many notes from you, then as a result of that they may have to increase their cash deposits with you.

Mr. BEATTIE: Well, they have to use cash deposits to get the notes. If the notes are paid out they have to send something in the way of payment.

Senator LEONARD: There is no incentive to embark upon printing of currency for any particular good that it might do, apart from the need that the people want to have till money or pocket money.

Mr. BEATTIE: I think that is right. You cannot force currency on people, if they do not want it, and, if they do want it, it is hard to prevent them from getting it.

There seems to be no point in preventing them from getting it. So both the banks and ourselves are quite passive in this matter. There is one element of expenditure that I should mention as an offset to earnings on the assets that the central bank holds against the notes and that, of course, is the servicing of the note issue, such as positioning it in the various agencies across the country, trying to keep it clean and, finally bringing it back and destroying it. There are expenses of that sort attached to it.

Senator HAIG: Did you not lose some some new currency in Vancouver recently?

Mr. BEATTIE: Yes, we did, but with the exception of a very small amount we got it all back.

Senator LEONARD: There is no particular purpose in having some statutory control over the amount of bank currency that might be made available?

Mr. BEATTIE: I do not think so in respect of currency, because it is not the major form of money that people have.

Senator LEONARD: It is only part of it.

Senator COOK: You cannot give it to the Government or anybody else unless it is paid for.

Mr. BEATTIE: No, we certainly cannot.

Senator COOK: I mean the Government cannot get currency for nothing and then use it to pay its bills. That is the answer.

The CHAIRMAN: That is inherent in the remarks in the document.

Mr. BEATTIE: They are Bank of Canada notes, not Government notes, you see.

The CHAIRMAN: Are there any other questions on this phase?

Senator HAIG: I move that the bill be reported without amendment.

The CHAIRMAN: We have stressed the main points.

Mr. BEATTIE: Yes.

Senator LEONARD: Is there anything else in the bill which Mr. Beattie wishes to call our attention to?

Mr. BEATTIE: I don't think so. There are some provisions dealing with arrangements regarding directors and management of the Bank of Canada which are not of major importance and there is a provision made that no person is eligible for appointment who is a director, partner, officer or employee of a chartered bank, a bank to which the Quebec Savings Banks Act applies, or an investment dealer that acts as a primary distributor of new Government of Canada securities. Furthermore, the membership of the bank's executive committee would be enlarged by one director.

Senator THORVALDSON: I notice you have put in the word "partner". That is simply to correct the previous situation where it was not included.

Mr. BEATTIE: Yes.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee adjourned.



First Session—Twenty-seventh Parliament

1966-67

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 42

Complete Proceedings on Bills C-222 and C-223,
intituled, respectively: "An Act respecting Banks and Banking" and
"An Act respecting the Saving Banks in the Province of Quebec".

WEDNESDAY, MARCH 22nd, 1967

WITNESSES:

The Department of Finance: The Honourable Mitchell Sharp, Minister;
C. F. Elderkin, Special Adviser and former Inspector General of Banks.
The Canadian Bankers' Association: S. T. Paton, President.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Isnor	Reid
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Leonard	Thorvaldson
Cook	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Croll	Macdonald (<i>Brantford</i>)	Vien
Dessureault	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(47)
Flynn	Molson	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 22nd, 1967:

A Message was brought from the House of Commons by their Clerk with a Bill C-222, intituled: "An Act respecting Banks and Banking", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Lang moved, seconded by the Honourable Senator Burchill, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Burchill, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

A Message was brought from the House of Commons by their clerk with a Bill C-223, intituled: "An Act respecting Savings Banks in the Province of Quebec", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate.

The Honourable Senator Bourque moved, seconded by the Honourable Senator Vaillancourt, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Bourque moved, seconded by the Honourable Senator Vaillancourt, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 22nd, 1967.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2.30 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Benidickson, Burchill, Choquette, Connolly (*Ottawa West*), Cook, Croll, Flynn, Gouin, Haig, Kinley, Lang, Leonard, Macdonald (*Cape Breton*), McCutcheon, Pearson, Power, Rattenbury, Roebuck, Smith (*Queens-Shelburne*), Thorvaldson, Vaillancourt and Willis (26).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel and R. J. Batt, Assistant Law Clerk, Parliamentary Counsel and Chief Clerk of Committees.

On motion of the Honourable Senator Croll it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bills C-222 and C-223.

Bill C-222, "An Act respecting Banks and Banking", was read and considered.

The following witnesses were heard:

The Canadian Bankers' Association:

S. T. Paton, President.

The Department of Finance:

The Honourable Mitchell Sharp, Minister.

C. F. Elderkin, Special Adviser and former Inspector General of Banks.

Five amendments were then moved, as follows:

1. The Honourable Senator Leonard moved the following amendment:

Page 14: Strike out lines 38 to 40, both inclusive and substitute therefor the following:

"but this subsection shall not come into operation until the 31st day of December, 1972".

The question being put, the motion was declared *lost* on the following division:
YEAS—6—NAYS—9

2. The Honourable Senator Leonard moved the following amendment:

Page 56: Strike out line 12 and substitute therefor the following:

"before the 31st day of December, 1972".

The question being put, the motion was declared *lost* on the following division:
YEAS—8—NAYS—8

3. The Honourable Senator McCutcheon moved the following amendment:

Page 15; line 3: Strike out "one-fifth" and substitute therefor "two-fifths".

The question being put, the motion was declared *lost*.

4. The Honourable Senator McCutcheon moved the following amendment:

Page 53: Add to line 50, the following:

" , provided that this subsection does not apply to any bank incorporated prior to the 22nd day of September, 1964".

The question being put, the motion was declared *lost*.

5. The Honourable Senator McCutcheon moved the following amendment:

Page 53: Strike out lines 40 to 43, both inclusive, and substitute therefor the following:

"1972, having outstanding total".

The question being put, the motion was declared *lost*.

On motion of the Honourable Senator Croll it was *Resolved* to report the said Bill without amendment.

Bill C-223, "An Act respecting Saving Banks in the Province of Quebec", was then considered.

On motion of the Honourable Senator Vaillancourt it was *Resolved* to report the said Bill without amendment.

At 5.10 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

WEDNESDAY, March 22nd, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill C-222, intituled: "An Act respecting Banks and Banking", has in obedience to the order of reference of March 22nd, 1967, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

The Standing Committee on Banking and Commerce to which was referred the Bill C-223, intituled: "An Act respecting Savings Banks in the Province of Quebec", has in obedience to the order of reference of March 22nd, 1967, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, March 22, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill C-222, respecting Banks and Banking, met this day at 2.30 p.m. to give consideration to the bill.

Senator **SALTER A HAYDEN** in the Chair.

The **CHAIRMAN**: Honourable senators, I call the meeting to order. We have before us this afternoon Bill C-222. Having regard to the importance of the bill, may I have the usual motion that the proceedings be reported?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The **CHAIRMAN**: Honourable senators, the Minister of Finance will attend the meeting this afternoon, but he will not be here until 3 o'clock. In the meantime, we might hear a statement from Mr. S. T. Paton, President of the Canadian Bankers' Association, on the particular clauses which were the subject matter of discussion this morning. We might move the discussion along to the stage where, when the minister arrives at 3 o'clock, we can hear what he has to say about it. Is that satisfactory?

Hon. **SENATORS**: Agreed.

Mr. S. T. Paton, President, Canadian Bankers' Association: Honourable senators, I appreciate very much the opportunity of being here with you today. I sat in on your deliberations this morning and was very much impressed with the representations made at that time on both these particular subjects which we are going to discuss now. Frankly, there is not much I can add to the excellent expositions made by your chairman and by honourable senators Leonard and McCutcheon.

With regard to directors and interlocking situations, this was not a subject which we specifically commented on in our brief to the parliamentary committee.

We referred to clause 76 and took an approach that this was not desirable legislation. The reason we did not refer to the limitations on the directorates of trust companies and other corporations, was, perhaps that we hoped we might be able to make some change in clause 76 itself, which probably would render clause 18 to some extent superfluous.

This did not come about. There was a change in clause 76, a very satisfactory amendment so far as the banks are concerned, with the exception that the limitation of ten per cent of trust and loan association shares remained as it is and as it was.

Dealing with the directorate situation, and I think I speak for the Bankers' Association when I say this, I have the feeling that any situation that might appear on the surface to be questionable with respect to the operation of these two institutions of different financial types is purely illusory. There has been absolutely no indication and no evidence at all that the fact that one individual was a director of a chartered

bank and at the same time was director of a trust company was in any way inimical to the operations of either one of these institutions.

This subject was discussed in the parliamentary committee hearings, and at that time I think there was an expression quite strongly supported that the detrimental effect of this legislation would be felt by the trust companies rather than by the banks, and, if there was an area where this was not desirable, it was in the area of the trust field, where as we all know there have been some problems and there have been many new companies and new incorporations.

In short, when it came to be a choice between the two it seemed likely that the individual concerned would prefer perhaps to stay with this banking directorship rather than with his trust directorship. Be that as it may, it is a fact that whichever corporation loses a director, it is losing strength because these directors are selected, so far as the chartered banks are concerned, from right across the country. They have much to contribute to the deliberations of the banks at board meetings and in their advice to management, which is a most important factor, in the opinion of the association this legislation was certainly built on a rather illusionary base.

We would certainly quite strongly support any amendment that would eliminate the clause. Failing that, we feel that there should be an extension certainly of the time required to comply with the legislation. The amendment to clause 75(2)(g) extends the date to December 31, 1972, and perhaps if that is the only concession we can obtain this would be a suitable date by which these separate clauses could be met. With the relative closeness of the removal of the interest rate ceiling, as was mentioned in the chamber this morning, the effective time for a trust company director who is also a director of a bank would start to run January 1 or 2, 1968 and be through by January 1970. There is no ministerial jurisdiction permitting a further extension of this, so this would mean the effective date would be January 1970.

In clause 76 the date is July 1, 1971. As we all know, the original intention was to allow it to go five years. However, it might be the easier way to have them all expire on the same day, namely December 31, 1972.

I think there is not much that I can add to the advantage of the freedom that trust companies and banks should have with respect to selection of directors, and we must remember that this legislation also applies to any company that owns more than 10 per cent of a trust company. The limitation on joint directorship there is also applicable where any company or corporation owns more than 10 per cent.

With respect to the limitation on the number of directors in other corporations, where one-fifth is the limit prescribed by the act, we feel that where a corporation has a relatively small board, this can be quite difficult. This can create rather quite difficult situations in more than one case. We would respectfully suggest that if there is a need for a limitation on this, and we do not agree that there is, this could be raised at least from one-fifth to perhaps two-fifths.

Senator BENEDICKSON: Mr. Chairman, on the last point brought up by the witness, the matter of directorships, I do not want to bring in company names, but could he give examples of what is involved in the new law which says that if you are on directorship "A" you cannot be on directorship "B"? This refers to the first part of his testimony on trust companies as well.

Mr. PATON: Well, in so far as the latter part of my statement is concerned, sir, I know of one specific instance where there is a board comprised of 10 or 12 directors, three of whom are members of the board of my own bank. When this legislation comes into effect it will be necessary for that number to be reduced to two. This does not accomplish anything. The presence on the board of these three individuals is very beneficial to the corporation, and I am quite sure there are a number of similar cases. I have no specific total from which I could quote.

Senator ROEBUCK: Mr. Chairman, the act says that the directors shall not be elected. Does that extend to re-election?

The CHAIRMAN: Shall not be eligible, it says.

Senator ROEBUCK: Eligible to be elected.

The CHAIRMAN: Not eligible for election, yes.

Senator ROEBUCK: Does that apply to re-election?

Mr. PATON: The bank boards are elected annually and come up for re-election each year.

Senator McCUTCHEON: There are many other instances of what Mr. Paton has described, Mr. Chairman.

The CHAIRMAN: Oh, yes. The wording, Senator Roebuck, is that: "A person is not eligible to be elected or appointed a director if . . ." and this is one of the situations.

Senator CROLL: Mr. Chairman, I assume from what Mr. Paton said that he is looking for men with special qualifications in diversified industries, and the question is how do you justify taking three men from one board.

Mr. PATON: These individuals are from various geographical areas in the country, Senator Croll, and they are also from different professions. Their talents are separate entirely from their membership on the board in this particular company. Their talents are there and they would be very eligible directors notwithstanding their membership in the other board.

The CHAIRMAN: The point, Senator Croll, is that if this clause became law, it would mean that these men who are directors of a corporation other than a trust or loan company and who are directors of a bank would have to give up one or the other.

Senator CROLL: That is right.

Senator ROEBUCK: I suppose the effect of this is to spread it around a little bit more and not quite concentrate the directorships into a smaller group. It enlarges the group. I am not speaking for myself, because the act is very discriminating as against me.

The CHAIRMAN: Oh, yes. At least your position would be purely objective.

Senator ROEBUCK: Quite so.

The CHAIRMAN: Seeing that you are not eligible for one of the stated reasons.

Senator ROEBUCK: Quite.

The CHAIRMAN: Are there any other questions on this point?

Senator LANG: I wonder if the witness would care to comment on this: He mentioned this interlocking of directorships and that it would be to the mutual benefit of trust companies and banks. I suggest it is probably to the benefit of banks and trust companies. But I don't think the legislation was directed to the banks or trust companies so much as to the interest of the public generally. How do you reconcile this with the public interest?

Mr. PATON: I think you are referring to joint interests, as we must remember that the matter of main interest to trust Companies and to the banks as well as the ability to earn profits. The only way to earn profits is to improve their image in doing business with the Canadian public. Certainly there has been no evidence that has come to our attention of any detrimental effect whatever in the past, or anything other than a favourable effect.

Senator LANG: What's good for General Motors—

Senator BAIRD: Where did this idea come from? Who originated it?

Senator POWER: I moved it in the Banking committee away back in 1931. Somebody was thinking of it a long time ago.

Senator PROWSE: As I understand it, the new Bank Act provides that banks may now get into the mortgage lending business and provide money for houses, which they have not been able to do before and which constituted about 85 per cent, I think, of the business of trust companies. Now under those circumstances I think we are faced with a new situation where in the interests of competition from both it may be desirable, and

I think it is, and I would like to have your opinion on this, that we should not have people who are in competing businesses running both of these businesses.

Senator LEONARD: May I ask Senator Prowse a question. Should he not include in his comments, perhaps, insurance companies who are the largest lenders of mortgage money in the country, or does he see some difference in the competition they provide?

Senator PROWSE: I would say this: Probably we have overlooked something in here, and if there is an amendment to this perhaps it should be to include the life insurance companies.

Senator CROLL: Mr. Paton, are you aware of the fact that the matter of interlocking directorates is the most suspect of arrangements among the people generally?

Senator McCUTCHEON: Only certain kinds of people.

Mr. PATON: I much prefer to refer to these as common directorships rather than interlocking directorships. There is no interlocking with regard to operations. They are as separate and competitive as are our relationships with any other chartered bank. They are not interlocking in the area where they serve a common purpose. They are separate entirely. They have their board meetings on a different date and at a different place, and there is no association between the two.

Senator PROWSE: I would like an answer to my question. Perhaps I did not phrase it in the form of a question, and in that case I will rephrase it. Don't you think that there could arise a conflict of interest in the case of a person who was a director of a trust company concerned largely with providing mortgage money for housing and who was also the director of a bank which intended to engage in the same type of business, in the matter of interest, and the type of security they might want and the type of repayment they might expect?

Mr. PATON: I don't think so, Senator Prowse. My reason for saying that is this: We of the chartered banks will always in the foreseeable future regard this as a relatively modest percentage of our business. We are essentially commercial banks and will stay that way. We will have funds for mortgage business; we were in the business for five or six years, and took a very substantial part in the NHA lending from 1955 through 1959. I think it may have involved something in the neighbourhood of 8 or 9 per cent of our assets. There was no conflict at that time. There was no conflict of interest. I cannot see any developing now because as we expand our banking system our primary purpose and primary activities are in the commercial area.

Senator PROWSE: This brings me to my second point. The trust company business is going to remain largely in the mortgage business because this is where they are required to remain by law. It would seem to me to be in the interests of the trust companies not to have the banks making large sums of money available for housing, because this might encourage somebody to get the interest rates down, perhaps to where we could get a combined interest rate of 12 per cent on a combined mortgage.

The CHAIRMAN: Then you might have a case of the tail wagging the dog, because you might have the trust companies trying to influence the banks not to lend money.

Senator PROWSE: That is why I think they should be serving one master, and not two.

Senator FLYNN: You could have legislation on interlocking in a general way, but not limited only to the case of banks and trust companies.

The CHAIRMAN: In the field of mortgage loans there are many activities. Nobody can control the bank rate. It is going to be what the market says is the rate.

Senator PROWSE: But even now we reach a stage every year where towards the end of the year the mortgage companies have lent out all the money they have available for that year, and we are told that the mortgage money suddenly dries up, and when you go to get some you have to pay excessive rates—

Senator McCUTCHEON: Not excessive.

Senator PROWSE: It must be in the interests of somebody to keep the money dried up. If nobody had this interest, the banks could step in—

The CHAIRMAN: What is an excessive rate? Surely the market dictates the rate.

Senator PROWSE: I would say that even the lowest rate available today is an excessive rate for those who have to pay it.

The CHAIRMAN: Any other questions?

Senator BENIDICKSON: On the matter of interlocking directorships, and on this question of interest rates, is there a chance that if we did not reduce the possibility of directors of banks being directors of trust companies, that if we have through statute a maximum rate of interest for banks, the banks might through affiliation with trust and other companies, and through joint directorships, say "Well, our director of the bank would not permit us to make a loan or a mortgage under the new law at a maximum." You might be directed to "X" company that is not subject to this law and could charge a much greater interest rate on a mortgage.

The CHAIRMAN: You are making an assumption, senator, that interest rates are fixed by somebody or some group of people. There are too many forces at play in the market to say an interest rate is fixed.

Senator BENIDICKSON: No, Mr. Chairman. I am saying that Parliament dictates to the banks a fixed rate.

The CHAIRMAN: Not on mortgage loans.

Senator BENIDICKSON: Not on mortgage loans?

The CHAIRMAN: No.

Senator BENIDICKSON: Under the new act?

Mr. PATON: There is a quantitative limitation on residential loans.

The CHAIRMAN: No, there is no ceiling on mortgage loans.

Senator BENIDICKSON: The banks have not been allowed to arrange mortgages.

Senator McCUTCHEON: Yes they have, but the rate got higher than the permissive rate under the act, so they had to leave the field.

Mr. PATON: While there are common directors, in that several directors of a bank may be directors of one or other of the trust companies, this by no means says this will constitute even a quorum for a bank board. So they could, in effect, make any decisions along the lines you were suggesting of any possibility of their being able to implement their own interest rates if they wanted to.

Senator PROWSE: You may be overlooking the possibility a man may be particularly persuasive.

Mr. PATON: No matter how persuasive he is.

Senator McCUTCHEON: I think the bank directors are getting too much credit for the way they are directing the operations of the banks.

Mr. PATON: I hesitated to suggest that, but—

The CHAIRMAN: It is like deputy ministers. It is a good job we have so many excellent deputy ministers.

Senator McCUTCHEON: Right.

Senator RATTENBURY: This prevents interlocking directors, even though the bank has no interest in the trust company concerned?

Mr. PATON: Yes.

Senator LEONARD: No doubt the witness has seen the amendments made in the House of Commons since the bill came out of committee. Do you have any comments to make on the amendments made since you had an opportunity of appearing before the committee in the other place?

Mr. PATON: The amendments you are referring to are clause 75 (2) (g) or—

Senator LEONARD: The amendments that have been made since the bill was reprinted after coming out of the house, including the amendments made yesterday. In other words, I do not think the Bankers' Association have had an opportunity of saying anything about the amendments made since the report of the committee.

Mr. PATON: That is correct. Nor did we have an opportunity to comment on the amendments made by the committee in the other place, because we had completed our evidence prior to their clause-by-clause consideration of the bill.

Senator LEONARD: This is the opportunity for you to make any comments you like.

Mr. PATON: Thank you. I would say on behalf of the association that we are well pleased with the bill as it has come out of the committee. We feel it is a bill that will give us considerably more flexibility in performing the functions we think we are specially cut out for. There are some items in which we would have preferred to see changes, and we made our representations. In some instances we were met half way, and in others we were unsuccessful. I think, in general, it is a good bill.

In regard to some of the specific amendments that have come in, the one you referred to this morning, 75 (2) (g) on the Mercantile, this is not an item on which we spoke as an association. Each individual bank expressed its own opinion with respect to the adequacy or otherwise of this legislation, and I would not be in a position to express an opinion on that particular item.

Senator BENEDICKSON: I should be more familiar with the long testimony in the other committee, but what briefly is the evidence, if any, emerging from the other committee with respect to connections with an ownership of trust companies and other depository organizations of the chartered banks?

Mr. PATON: That particular subclause of clause 76 carried through from the original bill C-222 and, in effect, it limits the investment—

Senator BENEDICKSON: No, that is not what I asked. What is the record as to present affiliations and ownership of the relatively few chartered banks with respect to other depository institutions.

Mr. PATON: When you refer to the record, what do you mean?

Senator BENEDICKSON: You have listened to the evidence in the other committee. What evidence has been given about the ownership, affiliation or control by the chartered banks for which you speak today.

Mr. PATON: There was no specific evidence given as to the direct relationship between any chartered bank and any trust company.

Senator BENEDICKSON: Have you any information to give to this committee about it?

Mr. PATON: No, I have not. As a matter of fact, it was suggested that perhaps the Bankers' Association would prepare this for the other committee, and it was indicated the suggestion would not be in the best interests of the companies concerned, because the legislation implied a need to divest oneself of surplus shares.

Senator BENEDICKSON: That is an important part of this legislation, but I wondered to what extent certain existing situations would have to be changed.

Mr. PATON: I should perhaps say, senator, that the relationship of certain banks with certain affiliates, other than trust companies, was disclosed at the hearings. The President of the Royal Bank presented a brief in connection with a subsidiary, and reference was made to shareholdings, and it is on the public record. That is the only one in which there was a specific reference made.

Senator CROLL: But are you not, as a general manager of an important bank, aware of the relationship that the senator has reference to, banks affiliated with certain trust companies—the Royal Bank with certain ones, and others with others?

Mr. PATON: Solely by hearsay.

Senator CROLL: Then let us have the hearsay.

Senator SMITH (*Queens-Shelburne*): Surely, we can all read the newspapers?

Senator CROLL: That is immaterial. This is the general manager of a bank, and he has certain information.

Mr. PATON: I think I would not be remiss in saying that from the record of the evidence given it is indicated there is no share interest between the Royal Bank and Montreal Trust.

Senator McCUTCHEON: That is right.

Mr. PATON: Similarly with the Bank of Montreal and the Royal Trust.

Senator BENIDICKSON: Would you repeat that?

Mr. PATON: There is no share interest. The Royal Bank does not own shares of the Montreal Trust. The Bank of Montreal does not own shares of the Royal Trust.

Senator BENIDICKSON: This is a surprise to the public. I was very interested to hear this. This is a surprise, I think, to public knowledge.

Mr. PATON: This was given in evidence before the Porter Commission, senator. These relationships are on the record.

Senator LANG: I presume that interlocking directorates do exist as between the two institutions you mentioned?

The CHAIRMAN: I think the phrase that the witness preferred was "common directors".

Senator CROLL: How common can a director get?

The CHAIRMAN: It depends upon the derivation of the word. How interlocking can you get?

Senator ROEBUCK: I have no special knowledge, but I do know that the rumour is—I do not think I could call it any more than just a rumour—that some banks own some trust companies. You have mentioned one to which that does not apply, but we should have that information. I would like it specifically. I do not like things left in an indefinite way like this.

Senator McCUTCHEON: What difference does it make? You are either going to say they cannot control them and they have to get down to the 10 per cent, or you are not. Why should you tell the whole world that somebody is going to have to put a lot of shares on the market some day.

Senator POWER: Why not. Why should the control be in the hands of a small number of people? We are creating a financial aristocracy in this country.

Senator BENIDICKSON: That sums up the feeling of most parliamentarians.

Senator FLYNN: That is right, but we should not forget that the witness has said he does not know. I object to any hearsay testimony on this point, even though I am in agreement with those who see something very sinister in all this.

The CHAIRMAN: That is right. Are there any other questions of this witness?

Senator ROEBUCK: He could obtain the information very easily, if he wanted to.

Senator FLYNN: We may call the general managers of all the banks and have them tell us if they own shares of trust companies. But we cannot force the witness to say things he knows only through hearsay.

Senator CROLL: Mr. Chairman, may I say, now that Senator Flynn has said that this gentleman speaks from hearsay—

Senator FLYNN: That is what he said. I did not say that.

Senator CROLL: He comes here as the representative of the Bankers' Association.

Senator FLYNN: So he may.

Senator CROLL: That is the capacity in which he speaks at the moment. In that capacity he must have knowledge of what relationships there are between these various banks and other groups.

Senator FLYNN: He said that he did not.

Senator CROLL: Well, as representative surely he must have made himself knowledgeable on that point.

Senator McCUTCHEON: He says he has not. Why do you say that surely he must have?

Senator CROLL: Then he ought to have.

Senator FLYNN: But he should not be criticized simply because you would like to hear something—

Senator CROLL: No, it is not that. This is the sort of knowledge he ought to bring to this committee.

Mr. PATON: Perhaps, senator, I might enlarge my remarks. I had not quite finished my answer when we digressed a bit. I referred to two relationships that are on the public record which indicates that although there is not a share ownership there is some connection. There is not a share ownership. That evidence was given before the Porter Commission. I know also that my own bank, for example, has an interest in the Canada Permanent Trust Company, and it does own shares in this company.

There was also evidence before the Porter Commission given by other general managers of banks indicating their interest, if any, in a trust company. We were asked this direct question by the Porter Commission, and the answer is on the record. Now, I am not privy to the information in respect of other banks, as you will appreciate.

Suggestions similar to the ones raised here today were raised in the early hearings of the committee of the House of Commons, and I think it was generally conceded that it would be inimical to the best interest of the Canadian public to have this information made part of the public record. It was known to the Inspector—

Senator CROLL: Why would this knowledge be inimical to the best interests of the general public?

The CHAIRMAN: Please let the witness finish.

Mr. PATON: These holdings are known by the Inspector General, who has complete access to our records, and therefore through him known to the Minister of Finance. It is specifically spelled out in the Bank Act that the Inspector General's knowledge is to be held entirely by himself and, through him, the Minister, and that his knowledge of customer-bank relationships must always remain strictly confidential. This is one of the reasons why it is inimical to the best interests of the public.

The other reason is that if this clause is left in the Bank Act it will require the divesting of shares, and this could have an effect on the market.

Senator PROWSE: Can you tell us the number of persons who are directors of banks in Canada at the present time? What is the total number of directors?

Mr. PATON: I can give you that. There are approximately 255 directors—do you have that information, Mr. Perry?

Senator BENEDICKSON: I suppose it is inconceivable that any one person would be a director of more than one bank?

Senator PROWSE: Perhaps I could get the whole thing. What I am interested in is this: What is the total number of directorships in the Canadian banking system at the present time, and of the present number of bank directors how many would be disqualified by this legislation? What I want to know is how many vacancies are going to be created.

Mr. PATON: My information is somewhat dated. A survey was made in 1962, and it showed that there were 639 companies listed on the Toronto Stock Exchange—that is not part of your questions—and only 255 of them had a bank director on their boards and there were at that time 256 directors of banks.

Senator PROWSE: There were 256 directors of banks?

Mr. PATON: Yes. This was in 1962. I do not have the current information.

Senator PROWSE: Have you any information to tell us how many vacancies on the board of directors of Canadian banks will be created by this legislation?

The CHAIRMAN: Senator, I think there is another condition you will have to insert in your question before anything can be said with respect to it. This legislation, if it is implemented, says that if you are a director of a trust company you are eligible to be a director of a bank.

Senator PROWSE: That is right.

The CHAIRMAN: Now then, if you have people who are directors of a trust company and of a bank, you will have to know which directorship they will give up. It is only in that way that you can determine what vacancies there are going to be.

Senator PROWSE: There is going to be a vacancy, one way or another.

The CHAIRMAN: That is correct.

Senator PROWSE: How many people are going to have to face this choice? How many people are we arguing about.

The CHAIRMAN: Nobody is arguing, unless you are.

Mr. PATON: I do not have that information. I would venture a guess that there might be 50 or 75. Perhaps I am too high, but perhaps not. I am not aware of the figure because we have not obtained the relative statistics.

Senator PROWSE: In other words, if this goes through the banks might have to go out and find—how many banks are there altogether?

Mr. PATON: Eight banks, and two new ones.

Senator PROWSE: Ten banks, then, are going to have to find 75 new directors from somewhere in Canada?

Mr. PATON: I think it may be the converse. It may be that the trust companies will have to go out and find new directors.

Senator PROWSE: Or, the trust companies will have to find 75 new directors out of the whole Canadian business community? That is what we are talking about?

The CHAIRMAN: You are talking about it in the context of the representation of the financial interests.

Senator PROWSE: This legislation would do one or two things. This legislation attempts to cut down in the public mind a conflict of interest, either real or imaginary. At least, I presume that that is what it is for. Now, it is going to create a problem for either the trust companies or the banks because they will have to find 75 new people. This is the maximum, would you say?

Mr. PATON: That is purely an estimate. I might be out a bit, but I would think it is around that figure.

Senator PROWSE: You said between 50 and 75, and I took your highest figure. That means that we are saying that in the Canadian business community at the present time it would work a hardship on the banks and trust companies to find 75 new persons to be directors.

The CHAIRMAN: No, I do not understand that to be the question, senator. I think it is rather whether this action is supportable or arbitrary.

Mr. PATON: I think there is one major point we have not discussed this afternoon which I believe the Chairman referred to this morning, namely that the chartered banks permitted to keep 10 per cent of their investment in trust companies.

Senator McCUTCHEON: If they have a trust company.

Mr. PATON: If they have a trust company. But they will be precluded otherwise from having any representative on the board once this becomes law.

Senator McELMAN: Do the banks not have a number of investments in which they do not have more representation?

Mr. PATON: Yes, they have an investment portfolio.

Senator McELMAN: Since it seems to me that the minister is privy to all the cross play of investment between banks and near banks and trust companies, perhaps this is the secret to some of the clauses of this proposed act that are under question now. If it raises a question in one's mind. I think we must accept that one of the prime bases for the amendments to the banks and banking act is to improve the competitive picture in the whole financial field, since two of those prime competitors will be the chartered banks and the trust companies.

Senator McCUTCHEON: Life insurance companies are more important in the mortgage field than trust companies.

Senator McELMAN: Why the intensive interest to maintain these directors?

The CHAIRMAN: The one statement is made, senator, that the life insurance companies are much larger occupiers of the mortgage field than trust companies.

Senator McELMAN: I appreciate that. But for the moment we are discussing primarily two of the major competitors, or what will be the major competitors under this new act, namely the chartered banks and the trust companies. Why the intensive interest to maintain these directors? We are perhaps talking about 75 Canadians in the whole business and financial community of Canada out of some 20 millions of people. It seems rather a small number to be so intensely concerned about.

Senator BENEDICKSON: We are concerned with the people—the entire population.

Senator McELMAN: That is the point I am making.

The CHAIRMAN: Possibly we have taken this as far as we can without hearing the minister. This might be an appropriate time to hear from the minister on the several points we have been discussing.

The Honourable Mitchell Sharp, Minister of Finance: Mr. Chairman, may I first of all enter an apology for the short notice that has been given to the Senate. Even under the best of circumstances you are having very limited time to look at this very important legislation, and I can assure you that it was not the aim of the Government to foreshorten debate in the Senate in any way at all. We would have preferred to have seen as much debate as you wanted devoted to this bill. However, even the Government does not have complete control over the House of Commons, and things did not work out in quite the way that we had planned. I just make that by way of an opening observation.

Senator McCUTCHEON: But we have until about April 12 to consider this, have we not, Mr. Minister?

Hon. Mr. SHARP: I suppose I could say that the Senate has until April 12 to consider this, if they wish to do so; and they are masters of their own procedures. I would not recommend it, however. I would hope that the Bank Act which has now been before Parliament, if not before the Senate, since July, should be approved as quickly as possible. I can recall when we passed some of the extending acts, the temporary legislation to extend the charters of the banks to that they did not expire before the passage of the act, and some of the banks encountered difficulty continuing in business in other countries, because they were not quite sure whether they were authorized to continue to be chartered banks. Perhaps I can call on Mr. Paton as a witness in this respect, but I know there was something pretty close to panic amongst directors of some of the banks because Parliament did not get the charters extended until they had almost expired.

Senator McCUTCHEON: They can phrase their cables differently this time and say, "Unless we hear from you we are in business."

Hon. Mr. SHARP: Unfortunately, other countries have not governments quite as reasonable as the Canadian Government.

The CHAIRMAN: That will hold you!

Hon. Mr. SHARP: Mr. Chairman, would the senators like to ask some questions about this bill?

The CHAIRMAN: You came in on some of the discussion. We were discussing the relationship of directorships and what this bill proposes to do as between directors and trust companies and bank directors and other corporations, and also the time limit within which banks which have interest in the trust companies must shed that interest to 10 per cent. I think perhaps discussing the purpose of that could be a good idea.

Hon. Mr. SHARP: The purpose, Mr. Chairman, was as outlined by one of the senators who spoke while I was in the room, namely, to promote the independence and competitiveness of the banking system in this country.

I believe that the banking system of this country is not as competitive as it should be; I believe it is not as independent in its dealings with its customers as it could be; and I believe that the existence of so many common shareholders does not promote either of these causes. In particular, I believe that it is very much in the public interest and in the interests of the institutions themselves to reduce the number of common directors.

Senator McCUTCHEON: You said, "common shareholders" a moment ago.

Hon. Mr. SHARP: I am sorry, I meant common directors. This is a question of judgment as to what degree of interlocking there should be. This bill expresses, of course, a judgment on that point.

I do not think it is unreasonable, I think it is most important, from all points of view, to establish clearly in the public mind that the banks are operating independently, treat all customers alike, and that they in turn do not exercise an undue influence upon activities of other institutions, particularly those with which they are in competition. The trust companies, loan companies, are in competition with the banks, partly because they are deposit-taking institutions, all of them, and partly because they compete as lenders. This competition is going to increase, I hope, and in order to promote the competition I suggest, Mr. Chairman, that it would be better for all concerned if the boards of directors were not only independent but appeared to be so.

That is the general philosophy which underlies the legislation.

The CHAIRMAN: I thought there was in what you said some suggestion, it may be that it was not intended, that the banks, operating as banks, in their inter relationships, were less independent than you thought they should be. Were you intending to suggest that?

Hon. Mr. SHARP: Not as between banks. I think that the competitiveness of the banks can be promoted. There is, of course, another provision of the legislation, that prevents, hereafter, agreements on interest rates and charges and so on. I believe this is another part of the aims of the Bank Act and related legislation; but I am not suggesting that the banks themselves have common shareholders.

Senator McCUTCHEON: In regard to this theory you have put, is there any evidence that you know of, Mr. Minister, that the existence of common directors between, say a bank and three or four trust companies, for that matter, or vice versa, has in fact affected their competitiveness in the fields in which they are competitors, namely, primarily in taking deposits and in making certain types of loans?

Hon. Mr. SHARP: If you want a general impression, the answer to that question is yes. My impression is that these institutions are not as competitive as they should be. That is a qualitative judgment. I am not a director of a bank and never have been an employee of one, nor have I ever been associated with any trust company. The impression that I have—and it is very important at this time to create the kind of atmosphere that should prevail—is that these institutions work together for common purposes and are not active competitors. I believe that that is undesirable.

Senator LEONARD: Mr. Chairman, I think I should say here that, having been in the trust of loan field practically all my business lifetime, my own experience, as I said in the Senate today, is that there has been hard and keen competition; and I have never been conscious at all, as a person in the trust and loan field, of any lessening of the competition between them and the banks. Quite the contrary.

Senator McCUTCHEON: Some of the trust companies have competed so hard that they have got into difficulties recently.

Hon. Mr. SHARP: They have not many common directorates with chartered banks in those instances.

Senator McCUTCHEON: This one had a couple.

Hon. Mr. SHARP: May I ask a question, to clarify this point? May I ask Senator Leonard how it is that competition can be permitted between institutions, by directors who sit on both boards? Surely they have an interest in promoting the position of both institutions, otherwise they are not discharging their responsibility.

Senator LEONARD: That kind of competition comes in in many ways and they exercise their judgment, as to what kind of advice or decision they make, in the interest of the particular company at the time they are sitting on that board, when the question arises. They may have to disclose an interest, and a director does, if he is especially interested in it. Certainly, as regards decisions of the companies themselves or of the board as a whole, this type of lessening of competition, in my experience, has never existed.

Hon. Mr. SHARP: I would suggest, however, that if there were fewer common directors there would be a greater disposition to compete.

The CHAIRMAN: Less discretion.

Senator ROEBUCK: Have you any estimate of the numbers, Mr. Minister, of people affected by the new amendment?

Hon. Mr. SHARP: I do not have the numbers. I did look at the boards of directors of some of these institutions and my impression was that there would be considerable disruption.

Senator McCUTCHEON: That is the understatement of the afternoon, so far.

Senator BENEDICKSON: Mr. Chairman, in this extensive bill, there is a frequent recurrence in several clauses of the word "association" but that word is not defined certainly in the definitive clauses. When Senator Lang spoke about this matter of association in the Senate this morning, he said that certain sections defined, within themselves, what "association" meant.

I appreciate what the minister has said about association in a practical way; but could he tell us about this matter of association, as he understands it, in the bill?

Hon. Mr. SHARP: Mr. Chairman, I pray that this is too technical a question for me. Perhaps this might be directed to Mr. Elderkin in the first instance. If there is any question of policy that arises, I may be able to answer it; but on the definitions in the bill I am a bit at a loss.

The CHAIRMAN: Are you ready to give the answer, Mr. Elderkin, or did you hear the question?

Mr. C. F. Elderkin, Special Adviser to the Minister of Finance (former Inspector General of Banks): If I understood Senator Benidickson aright, he is asking for the definition of "association". I do not think there is any mention of "association," but of "associates," and these are defined in clause 52. The minister said he wanted the bank to appear independent. I wonder if he makes any difference between the common director of a bank and trust or loan company, and the common director of a bank and any other company which may be related to the bank, either because it borrows from the banks or has other business relations with the bank. In other words, is there a difference between the problem of interlocking and the problem of disclosure of interest, which underlies this clause, and the restriction to a trust and loan company—which is the only one that exists in this text?

Hon. Mr. SHARP: Mr. Chairman, there is a problem which I am sure all senators realize, about the position of any director. It arises of course when a bank receives an application for a loan, from a company with which a director is associated. In those

cases, I am sure the directors declare their interest and allow decisions to be made by other people.

The CHAIRMAN: They leave the room.

Hon. Mr. SHARP: This is a very general problem.

Senator McCUTCHEON: He is not allowed in the room.

Hon. Mr. SHARP: Yes. I am sure that problem can be dealt with in a practical way. It seems to me that it would be a matter of difficulty, and I think it would be impractical, for example, to suggest that the companies in which the directors of the banks are also directors or executives, should be unable to deal with a bank. That would be an impractical and, I would think, an unnecessary regulation.

Senator McCUTCHEON: It is not a prime requisite of any bank director that the company he controls does a great deal of business with the bank?

Hon. Mr. SHARP: That has been, if I may say so, the principle underlying most bank directorates. However, it is not obviously the only consideration, if I may so, in this room.

Senator POWER: Obviously not the public interest, either.

Hon. Mr. SHARP: However, it is a general problem. We had felt that in the legislation we should try to minimize the extent of interlocking directorates, if I may use that word, and that we should take special precautions with respect to common directors of institutions that compete directly. That is why the special rules have been laid down for institutions which carry on a business that is close to banking. Indeed, some of my critics in the House of Commons have been charging me with not having the courage to declare them to be bankers. However, I have resisted the blandishments of these critics so far.

That is the best general answer I can give to the question.

Senator BENEDICKSON: Mr. Chairman, it was my function for several years in the House of Commons to table for the Minister of Finance the annual report respecting the shareholdings in the chartered banks of the country. I recall feeling a bit of surprise one time when I looked over this document to find that one of the mutual funds of the country was perhaps the largest shareholder in most of the chartered banks.

Would Mr. Elderkin or the minister tell me whether the subclause to which they referred in clause 52, having to do with associated shareholders, will affect that very surprising fact that I found when I was obligated annually to table this statement of the names of the shareholders in the chartered banks?

Mr. ELDERKIN: The mutual fund is one shareholder.

Senator BENEDICKSON: Well, I found that one particular mutual fund seemed to have a tremendous number of shares in most of the chartered banks across the country.

Hon. Mr. SHARP: Hereafter they will not be able to own more than 10 per cent in any one bank. They can hold 10 per cent in several, however.

Senator BENEDICKSON: At any rate, coming back to my point concerning the "associated shareholders", that will mean that they can have 10 per cent in 10 banks.

Hon. Mr. SHARP: That is right. It would be a pretty big fund, I should think.

Senator SMITH (*Queens-Shelburne*): Senator Leonard, in some remarks he made in the chamber this morning, put on record the situation with regard to the Canada Permanent Trust Company. He pointed out that on the board of directors of that trust company there were 16 bank directors. As I took it down in my note, three of those bank directors are vice-presidents of three separate banks, and there are four banks involved altogether from that total of 16 bank directors. Now, my question is, if all of the trust companies that we have jurisdiction over were in that particular situation, would you regard that situation as one requiring the kind of action you are now taking? I am looking for a reason for the assumption that must be made that there is some lack of competitiveness in such a position. Would you care to comment on that?

Hon. Mr. SHARP: That situation does not promote competition between the Canada Permanent Trust Company and the other banks.

Senator SMITH (*Queens-Shelburne*): Even if the four banks are represented on the board?

Hon. Mr. SHARP: Yes, because that may indicate that not only is there not active competition between the Royal Bank and the Canada Permanent Trust Company, which are related because of shareownership, but that there might be less competition than otherwise between that trust company and banks generally and among the banks themselves.

Senator LEONARD: My statement this morning, Mr. Minister, was that that was a theoretical position, but that in practice there was intense competition.

Hon. Mr. SHARP: Well, I cannot deny that, Senator Leonard. All I suggest is that there must be times, then, when there is some conflict of interest.

Senator LEONARD: And those are separate. I mean a director who finds himself in that position discloses it, and the decision is made.

Senator BENDICKSON: Surely herein, Mr. Chairman, we have to consider that those in banking comprise a relatively small number corporately—eight or 10. We know that most trades have some sort of association or union. We also know that our prime concern is the public. If you have a small organization of eight or 10 banks, and they have an association which presumably meets for common purposes, there might be a possibility of something happening that would come under the Combines Act. Is that not what you, Mr. Minister, have in mind in making the widest possible competition open now under this legislation, in the loaning, depository and other fields?

Senator McCUTCHEON: I do not think these fellows should belong to the same golf club.

The CHAIRMAN: I do not think so either, or even that they should go to the same church.

Senator McCUTCHEON: It is ridiculous.

Senator LANG: Mr. Chairman, in the Senate this morning and earlier in this committee this afternoon, there were expressions of concern with regard to the length of time that would be permitted to elapse until the severance of common directorship took place, in view of the fact that it would occur when the bank ceiling became free and that that might be rather shorter than was originally contemplated, and, because of that fact, would create an undue hardship.

There was also concern that this severance of common directorship did not tie in with the time fixed under the act when the banks would have to divest themselves of their excess trust company holdings. I was wondering if, under the circumstances as they exist today, the minister would care to comment on this facet of the bill?

Hon. Mr. SHARP: Mr. Chairman, one of the reasons why there is greater time given for the disposal of shares than for the change of directors is that it is easier to change directors than it is to dispose of shares.

Senator LANG: You assume it is going to be that way, do you, Mr. Minister?

Hon. Mr. SHARP: Well, I know of so many people who would love to be asked to go on the boards of these companies. I do not think there will be any absence of candidates. I can understand the position of those who will find themselves supplanted or removed. However, I do agree that so far as the shares are concerned there should be reasonable time, because there is nothing to be gained by having to dispose of those shares too quickly on the market. That is why in the legislation more time is given for this purpose.

The CHAIRMAN: It appears to me at least that the committee has covered everything there might be in this particular aspect of the bill. Unless any senator has anything further to say on this particular aspect, then, we can move on to another part that was subject to particular interest, namely clause 75(2)(g).

The comparison, Mr. Minister, was between the form of the clause as it was in the bill before and the form of the clause as it was after it was changed yesterday afternoon. The criticism seemed to be that the change which was made yesterday, with all due respect, produced a fanciful, unreal kind of situation.

Hon. Mr. SHARP: I am very happy to comment on that, Mr. Chairman. The senators will have observed the history of this clause 75(2)(g). It was introduced in the 1965 bill in exactly the same form as it was introduced by me in the 1966 bill.

That clause, as you know, provides that any bank which has a shareholder that owns more than 25 per cent of the stock shall be restricted in its operations to liabilities 20 times its authorized capital. When the bill was considered by the house committee on Finance, Trade and Economic Affairs, two changes were made. The first which was not in clause 75 (2) (g) itself but related thereto was that any bank that had a shareholder with more than 25 per cent could only dispose of shares to residents of Canada. Now this was a very important change. Up until that time it would have been possible for the Mercantile, which is one of the banks involved here—

An Hon. SENATOR: Is there another?

Hon. Mr. SHARP: The Bank of Western Canada.

It would have been possible for the Mercantile to have disposed of shares to non-residents, and that had certainly not been the intention of the Government, but it was not until the bill came before the committee that this point was fully realized. I suggested to the committee that that gap in the legislation should be filled, and the committee so recommended.

The second change arose out of the request that was made to me by the Mercantile Bank of Canada that they would like to have some time before having to bring their liabilities down to 20 times their capital in order to improve the profitability of the bank with the intent of selling shares to Canadians.

This request was considered by the committee, which on its own initiative, and with the unanimous consent of the members of the committee, altered the date by which a bank in that position had to bring its liabilities down to 20 times its authorized capital from 1967 to 1972. I was asked in the committee what I thought about this suggestion, and I said I thought it was not unreasonable. I said I was very anxious to see the Mercantile Bank become a Canadian-owned institution and I did not want to put any unnecessary roadblocks in the way of the bank in disposing of its shares. I thought this was a question of judgment and I thought it was not an unreasonable request. As I say, the house committee on the motion of one of the Liberal members, seconded by one of the N.D.P. members, and with the unanimous consent of the members who had been discussing this question over some considerable period of time agreed to recommend that the date be changed from 1967 to 1972.

When this proposal was made in that committee I was a bit concerned myself about the possibility that whatever the intention of the Mercantile Bank might be, it was just possible that the liabilities might expand to much more than 20 times the authorized capital, and we would come to the end of the period faced with the bank having expanded to this extent without having disposed of shares to Canadians. We would then be faced with the necessity of requiring the bank to reduce its operations, in accordance with the law.

I thought at the time that I should perhaps suggest to the committee that the extension of time should be subject to the approval of the Governor in Council so that there would be an opportunity for the Government to consult with Mercantile Bank from time to time, and if it appeared at any time that the bank did not intend to sell shares to Canadians, notwithstanding its representations to us, then the date might be advanced to a date earlier than 1972, before the liabilities had expanded to a point where it might not be expedient to compel them to reduce their operations. They would have employees; they would have branches and so on, and it would be a very awkward problem. However, at the time I was not quite sure whether the motivation would be understood, and whether in fact the committee might not feel that it was undesirable to

place this discretion in the hands of the Government. During the debate in the house in these last few days two or three members had drawn attention to this possibility, and I was very happy indeed when the amendment was moved that would give the Governor in Council the authority to extend the date between 1967 and 1972. This was not in any way contrary to the views of the Government, and there were no changes made in principle either at the time that date was extended for five years or when the change was made to give the Governor in Council some supervision over the extension of time.

Perhaps I should add for clarification that providing the Mercantile Bank does act in good faith, that is with the intention of selling shares to Canadians, and that they are using the time for the purpose for which they asked the extension, then permission to extend the time will not be unreasonably withheld. I said in the committee and I reiterated that I believed that it was not an unreasonable request on the part of the Mercantile Bank, and I am still of that view. In accepting the amendment that was made yesterday, I did so simply to ensure that the time was used for the purpose for which it was asked.

The CHAIRMAN: What you envision, then, is that first of all there will have to be a meeting and some action by the Governor in Council on or after December 31, 1967.

Senator McCUTCHEON: Before.

Hon. Mr. SHARP: Long before.

The CHAIRMAN: The bill says:

... enables the bank to exercise, directly or indirectly, effective control of a trust or loan corporation, the Minister may by order require the bank to divest itself of those shares in that corporation within such time as the Minister considers reasonable and the bank shall sell or dispose of such shares within the time prescribed therefor by the Minister.

Senator McCUTCHEON: As it stands now it has to be corrected before 31st December.

The CHAIRMAN: But then, Mr. Minister, having corrected it so that it is embarked on its way with proper attention to the order of the Governor in Council, what is the significant date? Is it possible that at some time you could say, "Well, you can maintain your position as it is, even though it does not comply with the formula, until December 31, 1969?"

Hon. Mr. SHARP: It is possible. There is no limit in the amendment as I understand it. They could make an extension for one year, two years, three years, four years or even five years, but of course five years would be too long because it would be completely against the intent of the amendment.

Senator McCUTCHEON: Then having given the company until December 1969 you might change your mind, say, in the middle of July 1969?

Hon. Mr. SHARP: Theoretically that is correct.

Senator McCUTCHEON: You have always to keep in mind the view that the operation would have to be curtailed, and as a result you get into the position where the company has to sell its shares to Canadians at a price that is reasonable having regard to the bank's position, and reasonable having regard to the fears of Canadians that the guillotine may come down.

Hon. Mr. SHARP: It was for this reason, Mr. Chairman, that I did not originally ask for the amendment because I thought that if I asked for it there might be some such suspicion. As I say, I was happy however when the house decided that this was a reasonable precaution.

Senator FLYNN: What would you say would be the minimum delay you would give the banks in setting a date? Would you say three months from now, six months from now?

Hon. Mr. SHARP: My own opinion would be that if they came to us for an extension beyond December 31, 1967, then we would probably grant it for a minimum of one year.

Senator FLYNN: Do you think that would be the minimum the bank would require at that particular time to dispose of its shares?

Hon. Mr. SHARP: No, they will have to come and apply to us again for another extension. If they satisfied us they were acting in good faith and they were still in the process of improving the profitability of the bank so they could dispose of the shares—

Senator McCUTCHEON: You are now suggesting they are going to run a bank on a basis not to improve its profitability? If so, we had better keep it the way it is, because we need some non-profit banks in this country.

The CHAIRMAN: Is there any other comment on this? As to the other portions of the bill, I do not see any necessity of going through it section by section.

Senator McCUTCHEON: There is one matter that received some discussion, and I think we might discuss it while the minister is here.

The CHAIRMAN: Which is that?

Senator McCUTCHEON: That is subclause 7 of clause 18, which restricts the number of directors from a single company—it is at the top of page 15—to one-fifth. I do not think the minister has commented on that.

The CHAIRMAN: No, he has not. Your suggestion was it is hard to get one-fifth of three?

Senator McCUTCHEON: Yes, it is very difficult to get one-fifth of three or four.

Hon. Mr. SHARP: I am sure that in certain instances individual divided is superior to another person whole.

Senator McCUTCHEON: I think, Mr. Minister, this is another of these things that is pretty meaningless. If I were a director of companies that this would affect, I could expand my board by adding stenographers and lawyers. I can remember one company of which I was a director that went into business in the State of Massachusetts, and it had to have a majority of American citizens on the board, and we appointed a number of lawyers who were under retainers to us. This is completely meaningless if you want to get around it, and there is no evidence that it hurts the bank or the competitors. We are getting away from trust and loan companies now. If you have an industrial company that has ten directors, I know of no reason why of those ten directors three should not be part of a bank board of 45.

Hon. Mr. SHARP: Mr. Chairman, this is a question of opinion. As I explained to the committee, the purpose of this legislation is to promote competition and independence. I find it difficult to believe that that rule is going to interfere very much, if at all, with the proper management or direction of a company. Surely, all the talent is not to be found in one place in this country?

The CHAIRMAN: No, I do not think we can assure the purpose is to provide an apprenticeship for directors. Rather the test is whether there is any interference in the operations of the company having such a membership on the board, as against what is provided here that might be against the public interest. Surely, that is the test?

Hon. Mr. SHARP: My personal view, Mr. Chairman, is that it would promote the health of the business community in this country if the boards of directors of our principal companies were more variegated. I do not believe it promotes a healthy business community to have individuals who are on so many boards. I believe it would help in distributing the burdens and would also help in promoting promising people, to give them opportunities of serving on these boards. I do not think it is necessary for puppets to be put on these boards. I believe there is plenty of opportunity for good people to be brought along.

I am not putting this forward as the view of the Government, but it is my personal view. I think it is as well in this kind of legislation to try to spread these responsibilities

and to bring along the second echelon, and to give them more opportunities to serve on the boards of these important organizations.

The CHAIRMAN: That is an additional object to the Bank Act.

Hon. Mr. SHARP: This is a personal observation I have. It is not the reason I included this section in the act, but I make it as a personal observation from my own experience in business. I began to be appointed to a number of important boards, and I did not know whether it was really serving the public interest, and whether I could not concentrate my attention on a few things more effectively.

Senator FLYNN: You would make interlocking illegal if you had your own way.

Hon. Mr. SHARP: Not illegal, but I would certainly like to see less interlocking. I think it would promote a healthier business community.

The CHAIRMAN: It is illegal when this bill becomes law, to the extent it applies to this act, so we are going part of the way.

Hon. Mr. SHARP: Yes.

Senator FLYNN: I think the minister would suggest the same principle should apply even outside the scope of this act.

The CHAIRMAN: You mean, put it in the Companies Act?

Senator FLYNN: Yes.

Hon. Mr. SHARP: No, I would draw a distinction, Mr. Chairman. I think the banks have a pervasive influence on the community far more important than the ordinary commercial and manufacturing organizations. I believe it is an improvement in this act, and I believe it is one of the major reforms that has been made in our banking legislation, to effect a change in the practice that is now being followed.

The CHAIRMAN: I was not commenting on its inclusion here, but the generality of your statement.

Senator McCUTCHEON: It is like the Carter Commission trying to introduce equity into taxation!

The CHAIRMAN: That is right. It does not exist.

I was going to say a few minutes ago that there were certain headings discussed in the Senate this morning. There are certain headings that are substantial and indicate changes. Possibly, we should confine ourselves to those and get the view of the minister. I am thinking, for example, of clause 91, the interest clause; and there may be clauses dealing with cash and secondary reserves, to the extent they involve changes—clauses of that kind that are new and represent progress.

Senator McCUTCHEON: I have a question on clause 91, page 80, Mr. Chairman. I want to get the minister's reasoning on this. Of course, I think we all recognize there has been a drastic change in interest rates since this bill was introduced, but if my reading of the subclause is correct—

Senator POWER: What subclause?

Senator McCUTCHEON: It is subclause 9 of clause 91. It is at page 80 of the bill. If the yield on short term Government bonds does not mount to a terrific extent within the next ten days the ceiling will be off automatically on December 31, 1967.

Hon. Mr. SHARP: Yes.

The CHAIRMAN: You have got to do the three-month averaging here.

Senator McCUTCHEON: I am talking of a three-months' average. I put on the record this morning what I thought the average was for January, February and the first half of March.

The CHAIRMAN: But this averaging period means a period of three months ending on November 30 or May 31.

Senator McCUTCHEON: No, no, Mr. Chairman. I very rarely catch you out, but this says that where the average of the market-yield on short term bonds of Canada for

all Wednesdays in any period of three months ending after the 31st day of December, 1966—

The CHAIRMAN: Yes.

Senator McCUTCHEON: So, I think it is more than likely that the trigger will be pulled on March 31, or when the calculation is made thereafter. In those circumstances, I ask the Minister if psychologically he should keep the $7\frac{3}{4}$ per cent ceiling on? Might it not be better, in the light of what we now know, to set that rate until July 31 this year instead of December 31?

Hon. Mr. SHARP: Mr. Chairman, we considered this question. The formula in the bill that I introduced in the House of Commons was slightly different.

Senator McCUTCHEON: That is, the original bill?

Hon. Mr. SHARP: Yes, the original bill. It provided that the ceiling would not come off until the average for three months was less than 4 per cent. After examining the implications and having in mind the representations made by the Canadian Bankers' Association, we came to the conclusion that there was not much sense in having a ceiling that started at $7\frac{1}{4}$ per cent because we knew that that had been established—it was the average of the three months up to November, and that applied for the first six months of 1967—and then to have the ceiling come down to perhaps $6\frac{3}{4}$ per cent or $6\frac{1}{2}$ per cent, and then for it to come off, as it might having regard to the way interest rates were going.

So the committee looked at several variations. They looked at the variation that would have maintained the ceiling not below the highest point established by the formula until it came off. That was rejected as not being a very sensible formula, although it had something to recommend it. We looked at the possibility of raising the trigger point to 5 per cent, and doing nothing else. That indicated, as Senator McCutcheon has pointed out, that the ceiling would come off almost immediately. One of the purposes that the Government has had in mind in providing a formula for the relaxation and eventual removal of the ceiling was to provide a transition period. If we had simply raised the trigger point to 5 per cent there would then have been no transition period. The act would have been passed, and within practically no time at all the ceiling would have been off.

During the discussion of the bill in its original form the Government had been of the view that a transition period was desirable. We had reached the conclusion identically with the Porter Commission and the Economic Council and others who had studied this subject that the ceiling on bank interest charges performed no social function. If I can introduce a partisan note here, I will say that it was the most illiberal—

Senator McCUTCHEON: It certainly was not a Conservative act.

Hon. Mr. SHARP: It was the most illiberal of acts because it discriminated against the small man in that the big corporations could continue to obtain large loans at the ceiling while the small borrower had to go to the loan sharks and other lenders. So, we came to the same conclusion as did the Porter Commission, but we believed it desirable to provide some transition so that the banks themselves could prepare for freedom, and so that the public could get accustomed to the idea.

Having all of those considerations in mind the committee collectively came to the view that the simplest transition was to maintain the ceiling at the point reached in the first six months throughout the balance of 1967, and to raise the trigger point so that if interest rates continued in their present trend the transition would be a higher ceiling during 1967, and removal at the end of the year.

Those were the considerations that led to the committee's making these recommendations, which were adopted by the House of Commons.

Senator McCUTCHEON: This is, of course, a matter of judgment, and it is in a psychological area, but there is not transition period, Mr. Minister, from the present ceiling to the $7\frac{1}{4}$ per cent. That is going to happen overnight.

Hon. Mr. SHARP: That is right.

Senator McCUTCHEON: What I am suggesting quite seriously is that there would be more competition, and the public would be better off, if the $7\frac{1}{4}$ per cent ceiling is abolished at the end of four months rather than at the end of 10 months. I think that four months would be adequate for the banks to make their plans. People got very used to automatically paying the ceiling rate over the last few years. I would rather see, now that we know or suspect that the trigger is going to be pulled on March 31, the transition period shortened. I accept the fact that there should be a transition period, but I should like to see it shorter than the one now in the bill.

Hon. Mr. SHARP: If these interest rates continue to decline, as they have been declining, I would like to see some action on the part of the banks that indicated that the ceiling is not going to be the norm. I would not only express that hope, but I have some confidence that in fact the banks by their lending policies are not going to fall into the error of assuming that the ceiling is the prevailing rate, because on prime loans I am sure the rate could be a great deal lower than that.

Senator BENIDICKSON: How can they do that without an amendment in this bill?

Hon. Mr. SHARP: The ceiling is only a ceiling, and not the rate. There have been many times in the past while the ceilings was 6 per cent that the banks were lending at $4\frac{1}{2}$ per cent or 5 per cent. When the ceiling is $7\frac{3}{4}$ per cent I hope that many lending rates will be a great deal lower.

Senator McCUTCHEON: I will stop by saying that I hope the Minister will learn in four months what he thinks he will learn in ten months.

Senator BENIDICKSON: Mr. Chairman, for many years there has been an avoidance of the provisions of the Bank Act, and I am wondering whether that matter is corrected by this bill. I refer to the fact that a number of years ago one bank made a personal loan, with some doubt as to its legality, at an annual rate of interest that exceeded the ceiling of 6 per cent set by the act. A great number of banks, before this legislation, have been making a particular kind of personal loan. If my recollection is correct their charges on an interest per annum basis—as has been indicated by Senator Croll in his notable crusade—worked out to between 11 and 12 per cent. I give the banks credit. Even in those cases their rates were much less than the rates a tremendous number of borrowers had to pay when borrowing from other institutions.

Does this bill by its provisions correct this lack of clarity in the present law with respect to the ceiling on the interest that a borrower, who pays back a loan on a month by month basis, pays, and which is, in effect, more than the 6 per cent ceiling spelled out in the present legislation?

Hon. Mr. SHARP: I listened to the discussion, but I did not catch the question put by Senator Benidickson.

Senator BENIDICKSON: I am sorry. I am sure you are aware that under the old age legislation when we broadly understood that banks were limited to an interest rate of 6 per cent, some years ago one man dared to initiate a personal loan system?

Senator McCUTCHEON: A very progressive man.

Senator BENIDICKSON: Yes; and the borrower got a better deal than elsewhere, but under which in effect the bank was getting between a 11 per cent or 12 per cent interest rate. I believe other banks followed that. I said there has been a great element of uncertainty in the law. It was never challenged in the courts. Does this legislation clear up that point?

Hon. Mr. SHARP: Hereafter, if as Senator McCutcheon has prophesied there is no ceiling, then of course there would be nothing to worry about at all. All kinds of loans and all kinds of rates would be perfectly legal.

I would point to clause 92 in which for the first time the banks will be required to reveal the true cost of borrowing, and this is an important matter. As the committee may know, all the provinces are moving towards adequate disclosure laws, and I undertook as the federal minister responsible for banking to introduce legislation to require banks to follow the same practices.

Paragraph 4 of clause 92 gives me a great deal of discretion, but I can tell the senators that the intent is to require disclosure in a form the same as is required by the most progressive of the provinces in this respect, and at the present time the most progressive legislation in this field in Nova Scotia and Ontario.

Senator PROWSE: Does that take care of the situation where a bank might say, "We will lend you \$200,000 at 6 per cent, on the condition that you keep a minimum balance of \$1,000 in your account all the time"?

Hon. Mr. SHARP: Yes. Provided it is related to the loan, that is right.

Perhaps I should add that this clause does not relate to big corporations. I am not certain yet how we will draw these regulations, but the purpose will be to protect borrowers who are not in a position to make their own calculations about the cost of borrowing. This clause is essentially for the purpose of protecting the small borrower to enable him to compare the cost of the borrowing from the bank, the true cost, compared to borrowing money from somebody else. If a large borrower wants to borrow from the bank it is assumed that he can make his own calculations.

Senator RATTENBURY: But the minister is probably aware that that practice is in effect now.

Hon. Mr. SHARP: Yes, and therefore the borrower who is borrowing—

Senator RATTENBURY: We know what we are paying?

Hon. Mr. SHARP: We know what we are paying. The small borrower is not in a position to make these calculations and is often misled by advertising, by the nominal interest. This will require the revelation of the true cost of borrowing.

The CHAIRMAN: Are there any other headings the committee would like to question the minister on?

Senator CROLL: Mr. Minister, with respect to disclosure as you set out under the act, and I think I know what you mean, that of course will apply to advertising as well?

Hon. Mr. SHARP: I was asked this question yesterday and I said that clause (e) of paragraph 4 would enable me to make regulations to that effect, but the question has not arisen in a practical way yet.

The CHAIRMAN: Are there any other headings that the committee wishes to question the minister on? I think we have touched on the main ones. I mentioned earlier the cash reserves and the secondary reserves, but we had that in the Bank of Canada discussion the other day and a good explanation was given by Mr. Beattie. If there are no other questions, are you ready?

Senator CROLL: I move the adoption of the bill.

Senator LEONARD: I would like to move an amendment to clause 18 and also to clause 76 along the lines we have been discussing in the house and in the committee today, before the bill is dealt with section by section.

The CHAIRMAN: I was not proposing to deal with this bill section by section at this stage, but to follow clause 18 now for the purpose of enabling you to propose your amendment.

Senator McCUTCHEON: What procedure are you suggesting, Mr. Chairman, so that we may be clear.

The CHAIRMAN: I was going to suggest that if there are any amendments to be proposed I will call the particular section so that the amendment can be proposed and dealt with; but when that is done I do not propose to go through the bill section by section.

Senator McCUTCHEON: Agreed.

Senator LANG: Before proceeding with that, are there any other witnesses to be heard from?

The CHAIRMAN: I am not aware of any other witnesses. If there are other witnesses who wish to be heard and have not acquainted me with the fact that they

wish to be witnesses, now is the time to come forward, or forever hold your peace. I think we can assume there are no other witnesses, and we can proceed.

Senator McCUTCHEON: Unless we choose to call some witnesses.

The CHAIRMAN: Yes. Now, Senator Leonard, you mentioned clause 18.

Senator LEONARD: Yes. I think probably honourable senators heard me on section 18 today, as well as Senator McCutcheon and Senator Hayden, and have also listened with interest, as always, to the minister. I myself respect sincerely the views he holds, which happen to be different from my own, on the desirability or the principle of the section so far as it relates to the common directors of banks and trust companies. However, I am not going to pursue that aspect any further.

There is also the question of retroactivity and the time when the sections will come into effect. If one accepts the position the minister takes, then one would have to go along with the idea that no further appointment would be made of this character.

Then there is also the question of the existing situation and whether or not the present directors should have at least a further length of time, and the companies, the banks on whose boards they serve, a further length of time in which to make the adjustment.

As the minister himself said, you can see that there will be considerable disruption. Looking at it purely from the standpoint of the industry, the loan company and the trust company industry, and possibly the banking industry also, I do not think it is desirable. Therefore, my amendment is directed towards extending the time within which this clause must come into effect.

As I understand it, the time is two years from the time when the interest ceiling comes off. It must be pretty well agreed that that is likely to be December 31, 1967. That would mean, if the interest ceiling comes off then, that these changes would have to be made by December 31, 1969.

I understand that was in the bill as originally introduced and a great deal of time has gone by since then.

Also, in the bill as originally introduced, the interest rate was much higher, and it might have been that it looked as if it would be a considerable time before the interest ceiling came off. Therefore, these elements, quite apart from that idea, would seem to justify some extension of time limit, more consistent with the time when the bill was first introduced.

Therefore, my amendment suggests a change, from two years from the time when the interest ceiling is dropped, which would be December 1969, if we are correct in our assumption as to the trend of the ceiling in interest rates, to a fixed day—which I suggest should be the first of July 1971.

I realize that, if interest rates did happen to be up, and if the ceiling did not come off until some later date, then the time would automatically have been extended in that way.

It seems to me, in the light of circumstances as they are now, it is desirable to set a fixed time rather than to rely on this rather uncertain time, namely, two years from the time the ceiling is removed.

Senator McCUTCHEON: Why not make it five years? I would say December 31, 1972.

Senator LEONARD: I would be very happy to change my thinking.

The CHAIRMAN: Where were you proposing to put it, senator?

Senator LEONARD: I am on page 14, section 18, to strike out the lines 38 to 40 inclusive, and substitute therefor the following: But this subsection shall not come into operation until the 31st day of December 1972.

That date happens to be the same date as that of the extension of time for the Mercantile Bank.

The CHAIRMAN: We have had an hour's discussion on this. Surely I can put the question. The amendment is:

Strike out lines 38 to 40 on page 14 and substitute therefor the following:
—but this subsection shall not come into operation until the 31st day of December 1972.

Senator KINLEY: I wish to say a word on this. I have heard a bit about this clause and I am not going to speak academically but from experience.

We had a trust company in Nova Scotia which earned a million dollars a year. The bank authorities elsewhere thought they would like to take charge of it.

I found that one of the biggest shareholders was sympathetic to the idea and so also was the president. They brought a resolution to the annual meeting to list the stock on the stock market. I thought I smelt something there and asked the chairman how that would help us. He said he did not know, but I thought it was for a purpose. There was a rumour that the bank was going to take over a trust company. I found that a trust company in Toronto was going to amalgamate with the trust company in Nova Scotia. I thought it had to go before the Senate before that could be done, but it appeared that the trust company had a national corporation, a dominion corporation, that the one in Toronto did not have, that enabled them to amalgamate without going to Parliament.

They got control of the stock by the influence, I think, of some of the largest shareholders, and that amalgamation was made.

It was not long until the president of our trust company was made a director of the bank. The chairman here will have some knowledge of that, as I think he is a director of the bank also. One of the largest shareholders of the trust company, an influential man, a very fine man, was also made a director of the bank.

That is to say, we in Nova Scotia found it always happened that when we got anything profitable down there, those outside tried to get it to reap the profit. We had at least five banks in Nova Scotia and they have been amalgamated with the banks in Canada. We thought they were good, that we got good service from those banks. I have nothing to complain about the banks, in their treatment of me, in 60 years I never was refused anything by a bank, I always got what I wanted, and I always paid them.

The minister has a point there when he talks about this amalgamation. The bank directors are a pretty close lot. They are good men and I have nothing to complain about, they have always treated me well.

In this instance, however, the minister has something when he says the directors should not be directors of both. You give the banks a privilege of a higher rate of interest and you give them all these privileges, so I feel this will do something to the trust companies and I want them to fight separately instead of being overruled by directors who belong to both.

I know that the president of the trust company of which I am a director is now a director of the bank. I was asking him a question a couple of months ago on one point and said: "Which side are you going to take, that of the trust company or the bank?" He said: "I do not know, I am on both sides."

I feel that the minister has got something there. I am going to vote against this amendment, because I think it is in the interests of the bank and of the public that these institutions be kept apart.

In business, if you have two companies, and you have shareholdings in each, over 50 per cent, at the time of division of profits, you have to put the profits together and you have no liberty in that regard.

There is another thing I do not like in business. If I am a subcontractor in a field and I supply an inventory and I take a contract, the first thing I find is that the bank has a lien and then they take over the book debts. It has come to the stage now that they even want you to surrender your mechanics' lien. In the case of the average man in business, when he goes to the banks in Canada they say "Give us a lien and we will

protect you." What are you going to do, it is only a matter of grace. He owes the bank more than he can pay. It seems to me it is time to clear up these things and the minister has a good idea in separating one from the other.

The CHAIRMAN: Are you ready for the question? You know what the amendment is now. Those who are in favour of the amendment please hold up your hands: six for. Those who are opposed to the amendment: nine against. The amendment is lost.

Now, is there any other amendment to any other clause?

Senator LEONARD: Yes, Mr. Chairman.

The CHAIRMAN: Which clause is that?

Senator LEONARD: Clause 76.

The CHAIRMAN: All right, we will call clause 76 on page 55. Which part of that clause do you wish to amend, Senator?

Senator LEONARD: We can always try to improve our batting average. It is pretty low at the moment.

Senator CROLL: I hope it stays that way.

The CHAIRMAN: Once at bat and no hits.

Senator LEONARD: Clause 76, honourable senators, deals with those cases where a bank holds more than 10 per cent of the shares of a company. I am particularly dealing with the matter of the shares of a trust or loan company. The amendment that I propose is to strike out line 12 on page 56, which now reads "before the 1st day of July, 1971." In other words, it now reads that these excess shares should be sold or disposed of before the 1st July, 1971.

Here again we are dealing with a situation to which I think the same type of reasoning should apply as in the case of the Bank of Western Canada, where they have been given 10 years to comply with the general requirements of the act applicable to that bank. In the case of the Mercantile Bank they have five years in which to get down to the 25 per cent holding that is required, and in this case the limitation is just four years. So that this is again retroactive legislation. These holdings that now exist have been acquired under the law, with the approval of the authorities in Ottawa, and the problem of disposing of any excess may be a very serious market problem.

The timing of it is important and the extension of time under the act may not at all actually affect the time when the disposition does take place, but, nevertheless, it seems to me in the circumstances there should be further leeway.

My amendment is to strike out line 12 and substitute the following: "before the first day of July, 1972". That is an extension of one year.

Senator McCUTCHEON: Why do you not tie it in with the time limit for the Mercantile Bank?

Senator LEONARD: Because this brings the date in line with the holding of the shares of any other Canadian corporation, and I think that is the comparable clause.

The CHAIRMAN: The amendment is simply to strike out line 12 on page 56, which reads, "before the first day of July, 1971", and to substitute for that the words: "before the first day of July, 1972". This relates to the disposal of shares of a trust company or loan company held by the bank in excess of 10 per cent.

Are you ready for the question?

Senator McCUTCHEON: No. I would like to ask Senator Leonard what he said that brought the date in line with.

Senator LEONARD: Perhaps I misled the senator. It simply extends the time period. Put it on this basis: it simply extends the time from the first day of July, 1971 to the first day of July, 1972, and I make no comparison with any other provision.

The CHAIRMAN: Are you ready for the question?

Senator McCUTCHEON: No. I would like to move an amendment, Mr. Chairman.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, those of us who have to sit back here cannot hear a word that is being said.

Senator FLYNN: I will give you my place.

Senator McCUTCHEON: I move an amendment to the amendment, Mr. Chairman.

The CHAIRMAN: Let me see, Senator McCutcheon. Perhaps Senator Leonard would agree to December 31, 1972 rather than have two votes.

Senator LEONARD: May I ask if your suggestion is to make it December 31, 1972?

Senator McCUTCHEON: Yes. Make it the same as the leeway given to the Mercantile Bank.

Senator LEONARD: I will accept that.

The CHAIRMAN: Instead of reading July 1, 1971 it will read December 31, 1972. Are you ready for the question?

Senator McCUTCHEON: May I suggest to the mover that, if he is going to move that amendment, with which I am in complete accord, he should at the same time make an amendment in the same terms applicable to line 14 on page 57.

The CHAIRMAN: Yes. Well, we will come to that in a moment.

Senator LEONARD: Yes.

Senator KINLEY: Mr. Chairman, I think the representative of the bank who was here said that they had no objections to this in the bill, and he represents the chartered banks. Now, do we realize what we are doing when we are moving these splinter amendments? There are some things in this act that our friends here would be in favour of but which I would be against. I would be against raising the percentage from 6 per cent, because the banks are prosperous now. I am a shareholder of the banks. They are prosperous. They have a good image in the country and the people admire them. We admire them. They do not bleed us and therefore we admire them and we think we have a wonderful bank system. But we think they are a factor helping to prevent inflation in this country and, if they can get along at 6 per cent, then they should do it.

I am not going to introduce that into this discussion in the form of an amendment or any such thing; I am willing to accept things as they are, but if we are going to destroy the bill here by amendments of clauses that were in the house for a year or two and, if we are coming down here to do so just because we are a little bit indignant because this bill did not come to us soon enough, then I would just point out that this matter was in the hands of the House of Commons who were elected by the people. and it seems to me that to introduce these little amendments in the face of what the minister has said here and in the face of the emergency of the occasion is not worthy of us at all. We should not do it.

Senator ROEBUCK: Hear, hear.

Senator KINLEY: And I am going to vote against this amendment.

The CHAIRMAN: Are you ready for the question?

Senator CROLL: Question.

The CHAIRMAN: Those in favour of the amendment please signify by raising your hands. Those opposed. The amendment is lost, eight to eight.

Now, are there any other amendments being proposed?

Senator LEONARD: Mr. Chairman, I did not quite hear what you said. Did you say that the amendment was lost on a tie vote.

The CHAIRMAN: Yes.

Senator LEONARD: May I ask whether the chairman voted?

The CHAIRMAN: No.

Senator CROLL: Question.

The CHAIRMAN: Are you ready for the question on the whole bill or are there other amendments?

Senator McCUTCHEON: No, no. There are other amendments.

The CHAIRMAN: All right, let us have the next amendment.

Senator McCUTCHEON: Mr. Chairman, in clause 18, subclause 7, at the top of page 15, line 3, I move that the words "one-fifth" be struck out and that the words "two-fifths" be substituted therefor.

The CHAIRMAN: Are you ready for the question? Those in favour of the amendment? Those contrary? The amendment is lost.

Senator CROLL: I move the bill.

Senator McCUTCHEON: I have another amendment.

Senator CROLL: You have another?

Senator McCUTCHEON: I have several. I hope Senator Kinley will not feel that this is a niggling amendment made to show our independence of the House of Commons. I think honourable senators heard what I had to say with regard to clause 75 (2) (g) on page 53 in the house this morning, and we have heard the minister this afternoon. I propose now to make another amendment. If that is not accepted then I shall have yet another amendment. I would propose to amend subclause (g) by changing the period at the end to a semi-colon and saying, "provided that this subsection does not apply to any bank incorporated prior to the 22nd day of September, 1964."

The CHAIRMAN: You wish to add a proviso to section 75 (2) (g) which would remove the retroactivity from this legislation.

Honourable senators, you have heard the amendment to provide that this subsection shall not apply to any bank incorporated prior to September 22, 1964.

Senator POWER: Would that apply to any bank?

Senator McCUTCHEON: To any bank incorporated before that date.

The CHAIRMAN: Those in favour of the amendment? Those contrary? The amendment is lost.

Senator McCUTCHEON: Then, Mr. Chairman, I will move, referring to the same subclause, that lines 40, 41, 42, and the words "Governor in Council" in line 43 be struck out and that there be substituted therefor the figures "1972". The effect of that is to restore it to the form in which it left the committee of the House of Commons.

Senator CROLL: In other words you are striking out the underlined words.

The CHAIRMAN: You are moving that the underlined words be struck out, and that the date be changed to 1972.

Senator BENEDICKSON: You want to return it to the state in which it was after the House of Commons committee.

The CHAIRMAN: It would return the paragraph to the position it was in before the House of Commons made the amendment yesterday afternoon.

Will those in favour of the amendment please indicate? Those contrary. The amendment is lost.

Senator CROLL: I move the bill.

The CHAIRMAN: We have a motion to report the bill without amendment.

Motion carried.

Senator McCUTCHEON: On division.

The CHAIRMAN: Honourable senators, we also have to consider Bill C-223, respecting savings banks in the Province of Quebec.

Senator VAILLANCOURT: Surely it is not necessary to go over this bill using the same arguments for another two hours. I move that the bill be reported.

The CHAIRMAN: I understand that this bill is merely consequential upon the bill we have just considered. I understand from Mr. Vanier, President of the Quebec Savings Bank, that this is the case.

Is there anyone here who wishes to be heard as a witness on this bill?

Since there is no reply, we may proceed with consideration of the bill. Having considered the previous bill at such length, is it necessary to go through Bill C-223 clause by clause?

Senator VAILLANCOURT: No. I move that the bill be reported without amendment.

Hon. SENATORS: Agreed.

The committee adjourned.



First Session—Twenty-seventh Parliament
1966-67

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 43

Complete Proceedings on Bill S-59,
intituled:
“An Act to amend the Canadian Citizenship Act”.

THURSDAY, APRIL 20th, 1967

WITNESSES:

Department of the Secretary of State: The Honourable Judy LaMarsh, Secretary of State; G. G. E. Steele, Under-Secretary of State; W. R. Martin, Registrar of Canadian Citizenship and O. A. Martin, Assistant Head, Examination Branch, Citizenship Registration Branch.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Isnor	Reid
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	Macnaughton	Vien
Farris	McCutcheon	Walker
Fergusson	McDonald	White
Flynn	Molson	Willis—(47)

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, April 19th, 1967:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Davey, seconded by the Honourable Senator Kinnear, for second reading of the Bill S-59, intituled: "An Act to amend the Canadian Citizenship Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Kinnear, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNeill,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, April 20th, 1967.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (Chairman.), Baird, Blois, Brooks, Burchill, Connolly (*Ottawa West*), Cook, Croll, Flynn, Gouin, Irvine, Isnor, McDonald, Molson, Pearson, Pouliot, Smith (*Queens-Shelburne*) and Vaillancourt. (18)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Croll it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-59.

Bill S-59, "An Act to amend the Canadian Citizenship Act", was read and considered.

The following witnesses were heard:

Department of the Secretary of State:

The Honourable Judy LaMarsh, Secretary of State.

G. G. E. Steele, Under-Secretary of State.

W. R. Martin, Registrar of Canadian Citizenship.

O. A. Martin, Assistant Head, Examination, Division, Citizenship Registration Branch.

On Motion of the Honourable Senator Pearson it was *Resolved* to report the said Bill with the following amendment:

1. *Page 2:* Immediately after line 20, add the following as new subclause (4):

(4) Subsection (8) of section 10 of the said Act is repealed and the following substituted therefor:

"Subparagraph (i) of paragraph (c) of subsection (1) does not apply to a person who

(a) has resided continuously in Canada for a period of one year immediately preceding the 1st day of June, 1956, and had been admitted to Canada for permanent residence prior to the 31st day of December, 1956, and, in addition, has also resided in Canada for a further period of not less than four years during the six years immediately preceding the 1st day of June, 1953; or

(b) acquired Canadian domicile before the coming into force of this paragraph.

At 10.30 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, April 20th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-59, intituled: "An Act to amend the Canadian Citizenship Act", has in obedience to the order of reference of April 19th, 1967, examined the said Bill and now reports the same with the following amendment:

1. Page 2: Immediately after line 20, add the following as new subclause (4):

(4) Subsection (8) of section 10 of the said Act is repealed and the following substituted therefor:

(8) Subparagraph (i) of paragraph (c) of subsection (1) does not apply to a person who

(a) has resided continuously in Canada for a period of one year immediately preceding the 1st day of June, 1956, and had been admitted to Canada for permanent residence prior to the 31st day of December, 1956 and, in addition, has also resided in Canada for a further period of not less than four years during the six years immediately preceding the 1st day of June, 1953; or

(b) acquired Canadian domicile before the coming into force of this paragraph.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE
THE STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Thursday, April 20, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-59, to amend the Canadian Citizenship Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. HAYDEN in the Chair.

The CHAIRMAN: Honourable senators, we have before us for consideration this morning Bill S-59. May I have the usual motion for the reporting and printing of the proceedings?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Honourable senators, we have the minister with us, and I expect she will make a short statement.

The Honourable Miss Judy LaMarsh, Secretary of State: No, I have no general statement to make, Mr. Chairman.

The CHAIRMAN: Then maybe we can do a little general questioning of you. With the minister are appearing: Mr. G. G. E. Steele, Under Secretary of State; Mr. W. R. Martin, Registrar of Canadian Citizenship; and Mr. O. A. Martin, who is the Assistant Head, Examination Division.

Senator CROLL: May I ask the minister a question?

The CHAIRMAN: Yes.

Senator CROLL: What is the incidence of people who do not take out Canadian citizenship papers who might be eligible on the basis of the five-year period?

Hon. Miss LAMARSH: Senator, we cannot answer that exactly. I was asking that very question just before we started, and I am told that in 1961 the census indicated it was more than one million people; but even that does not indicate how many of those might not yet have been eligible to apply for citizenship; and, of course, of that number many will have left and many new ones come in. We have no figures which indicate how many people have become landed immigrants and are continuously here until such time as they apply.

Senator CROLL: It seems to me there must be some department where a record of the number of people who have been here more than five years is kept, assuming they are eligible and are qualified for citizenship.

Hon. Miss LAMARSH: I recall the immigration officials giving evidence in the other place where the question of the brain drain came up, and they said they keep no figures of those leaving the country. So, unless we have some system of national card carrying or checking in, there is no way of telling in the population from time to time how many are qualified for citizenship or how many have not yet qualified.

Senator CROLL: Yesterday in the Joint Committee on Immigration I asked the question of the minister, who said he felt sure I would get the answer from you today. Well, he did not quite put it that way, but said that the Citizenship Branch probably would provide me with the information.

The CHAIRMAN: There is this though, I understand from Mr. Martin that there was an item when the census taking was last done under "Nationalities other than Canadian," and they have a figure for that which might be of some help.

Senator CROLL: Well, what would that figure be?

Mr. W. R. Martin, Registrar of Canadian Citizenship: In the census of 1961 the number of people in Canada who gave their nationality as other than Canadian was about 1.05 million.

Senator CROLL: Our population in 1961, as compared to now, was what?

Mr. W. R. MARTIN: The population now is—

Senator CROLL: Twenty million?

Mr. W. R. MARTIN: Yes, 20 million.

Senator CROLL: Is this compared to about 18 million in 1961?

Mr. W. R. MARTIN: Yes, about 18 million at that time.

Senator CROLL: So, it is two million as against that.

Mr. W. R. MARTIN: Yes, but since 1961, of course, many immigrants have come here, some of that number of 1.05 million have died or have left or have taken out citizenship, but many people who were asked that question probably did not know whether they were Canadians or not.

Senator CROLL: That is just my point. Madam Minister, what do you do to indicate to these people that becoming a citizen is a very easy process, and that they ought to be citizens; that it is to their advantage? Is there anything that you can do in that respect?

Hon. Miss LaMARSH: We give them encouragement and assistance. Many groups in the community, such as the I.O.D.E. and immigrants' aid groups, make a point of digging out immigrants who have not bothered to apply for citizenship, or who do not know how to apply. It has been my experience, as I am sure it has been yours, that many people who gravitate to communities of their own ethnic background learn very quickly how to take out citizenship from the others who have done it.

There is also a publicity campaign, of course. There was a new one started just this past year. These are advertisements in the ethnic press which urge people to come forward and obtain their citizenship. Mr. Martin might explain the line that was followed in this new advertising. It took a sort of "carrot on a stick" approach, and pointed out to people that certain benefits accrue only to citizens, and also some of the disadvantages of not being a citizen.

Senator BROOKS: Citizenship is not new to Canada. Having regard to the background of people who have come to Canada in previous years, I wonder if you could tell us just what percentage of them wish to retain their citizenship in the country from which they came, and do not wish to become Canadian citizens. Would those people amount to 5 per cent or 10 per cent?

The CHAIRMAN: The figure from the 1961 census indicated there were over a million persons of a nationality other than Canadian. I think you could probably take that as being the figure today. You might assume that some of these people have died since and other people have left, but their number will be balanced off by the people who have come in since. I would think that that figure would persist today, and it would be of the order of 20 per cent.

Mr. W. R. MARTIN: We think that that figure is bit low, but we have no way of knowing exactly what it is.

The CHAIRMAN: I have had the idea for some time that there is a certain amount of temerity in a lot of people. They hear by word of mouth that this examination that they have to go through in order to obtain their citizenship is a terrific thing. I am wondering why you do not reverse that procedure, and publish what I would call the examination paper, and send it to everybody who is eligible so that they may prepare themselves, and know exactly what it is you want them to do.

Mr. W. R. MARTIN: We are attempting to engage in a little more publicity by way of advertising in the ethnic press.

The CHAIRMAN: But, you know all the people who are applying on a particular day.

Mr. W. R. MARTIN: Yes, we know that.

Senator CROLL: What we are going to need in the very near future, judging from the very enlightened immigration procedures that have been announced by the minister, is some sort of program that will advise immigrants of the advantages of being a citizen. A citizen has more rights than a non-citizen. A person comes in with an application, and everything looks fine, but then he discovers this has held him back, and it is a year before it can be corrected. There is nothing you can do to correct that for a year. This is the applicant's own fault, but nevertheless he blames everybody but himself, and things change on the other side or on this side. The result is that you have a bit of a mess.

It seems to me that this would be a great opportunity for your department in its advertising to indicate the advantages of being a citizen, particularly to a person who has in mind bringing over members of his family. You may find that they will come forward more readily than they have in the past.

Senator MOLSON: May I ask the minister if it would not be an advantage if we had a greater knowledge of the one million-odd people of other nationalities who are in this country? I cannot help but contrast the situation here with the situation in the United States where they seem to keep a relatively close tab on people who are non-citizens. We do not seem to have any knowledge or, at the most, very little knowledge of these people.

Hon. Miss LAMARSH: It is my recollection from my professional days before coming into the House of Commons, that aliens in the United States have to register every year. They have to send in a card saying where they are. This country has never been one that relied on regimentation outside of wartime, even though this would apply to people who have not the rights of citizens. You would have to do something like that. I cannot think of any other way of keeping track of them. You would have to make the omission to register annually a criminal offence.

Senator BROOKS: Whether you become a citizen or not is entirely voluntary in Canada. It is thought that pressure should not be put upon people to become citizens.

Senator BAIRD: Are not these people given a registration card?

Hon. Miss LAMARSH: They get a little card which has "Landed Immigrant" stamped on it.

Mr. W. R. MARTIN: It is an immigration card.

Hon. Miss LAMARSH: The Immigration Department knows the address to which a person is going, but that does not say that he is going to stay there.

The CHAIRMAN: But you do issue a card saying "Landed Immigrant". Do you not keep a record?

Mr. W. R. MARTIN: The immigration people do.

The CHAIRMAN: Yes, but there is a record of every person coming in?

Hon. Miss LAMARSH: Yes. If there were not then nobody would be able to apply for citizenship.

Mr. W. R. MARTIN: But, there is no record of people going out.

Senator BROOKS: I was going to ask about deportations. Have we any record of the number of deportations?

Mr. W. R. MARTIN: I cannot speak with authority, but I think again in the Immigration Department they keep a record of deportations.

Hon. Miss LAMARSH: I know that they do keep a record of the people who are deported by ordinary action, and the people who appeal to the Appeal Board.

The CHAIRMAN: Do you have that figure?

Mr. W. R. MARTIN: The Immigration Department has it.

The CHAIRMAN: Do you wish it, senator?

Senator BROOKS: No. Perhaps we can get that when the immigration bill that we are expecting comes before us.

The CHAIRMAN: Are there any other questions of a general nature?

Senator PEARSON: I would like an explanation of the clause I mentioned in the house the other day. It is at the top of page 2 of the bill. I would ask the Minister for a full explanation.

Hon. Miss LAMARSH: Is this section 2?

The CHAIRMAN: It is at the top of page 2.

Hon. Miss LAMARSH: Yes, the amendment to section 10(1) of the Act. Well, this, I am informed, is consequential—are you referring to paragraphs (d) and (e)?

Senator PEARSON: Yes.

Hon. Miss LAMARSH: This is consequential upon the removal of the concept of Canadian domicile from the previous section, because when someone is under an order of deportation he is not a person who is able to obtain Canadian domicile. Domicile, you will appreciate, has to have in it a very strong element of intent, and sometimes you can only get evidence of that intent from the things that a person does afterwards. It does not matter what kind of intent you have if you are under some sort of coercion. If you are under an order to be deported then it does not matter what your intent is because you cannot acquire a Canadian domicile. It was thought to be inappropriate to give citizenship to a person who is under an order of deportation, and that is why this phrase is here.

The CHAIRMAN: It deals with who is eligible.

Hon. Miss LAMARSH: Yes, paragraph (e) is something that I think is most important because in my experience as a lawyer and a parliamentarian one of the most frequent complaints received is that elderly people can never obtain citizenship. I am thinking of special cases in the Italian groups where the wives stay in the Italian community and never learn the language. This provides that if you come to Canada and you are over 40 years of age and you reside here for 10 years then you do not need to have a knowledge of either English or French. So that a 50-year old immigrant may attain citizenship without the language requirement of this country.

Senator PEARSON: Provided such immigrant has ten years' residence?

Hon. Miss LAMARSH: Yes, up to this time. Of course, as you know, one now has to be here for 20 years to do away with the language requirement. That will continue to apply for anyone who came in under 40. The amendment means also that the spouses, widows or widowers of Canadians, may come in and may escape the language requirement.

Senator PEARSON: But why continue this 20 years for those under 35?

Hon. Miss LAMARSH: Well, certainly I think that everyone will agree that it is preferable that a citizen be able to speak one of the languages of the country. Also, we do not want to take away all the incentives to learn a language, because there is always the economic incentive. We want to give as much encouragement as we can.

Senator PEARSON: But the women or the wives of these immigrants, as a rule, seldom get out to mix with the public and learn English, which is surely the quickest way to learn.

The CHAIRMAN: The children, of course, go to school.

Senator PEARSON: Yes, but that means that one has to wait for the next generation to come along. As a rule, when you go into such a home you discover that the women cannot talk to you, but the men have a good smattering of English.

Hon. Miss LAMARSH: Under this new subsection (e)(iii), if he—or if she is the spouse, because the “he” is equivalent to “she” as well, even if the husband had applied the widow would be able to apply and would be relieved of the responsibility of either language.

Senator PEARSON: In ten years?

Hon. Miss LAMARSH: No, immediately.

The CHAIRMAN: There is no time specified under subsection (e)(iii).

Hon. Miss LAMARSH: Others have discussed other sections, but to me this is the most important section of the amendment.

Senator BROOKS: Are all orders of deportation made under this act?

Hon. Miss LAMARSH: No; that is an immigration matter.

Senator BROOKS: Where does the Citizenship Act taker over?

Hon. Miss LAMARSH: When one applies for citizenship, the Citizenship Act sets out what application the act must have, and until now, sir, a non-natural born Canadian, a person born abroad that becomes naturalized may lose his citizenship if he resides out of Canada for ten years, but this bill provides that may not happen, so that native-born Canadians and non-native Canadians are equated for the first time in this respect.

Senator BROOKS: Under the Citizenship Act we would have knowledge of all those who had been refused certificates of citizenship, would we not?

Hon. Miss LAMARSH: Yes, we have some such knowledge because we are the ones that refuse them.

Senator BROOKS: By reason of the deportation.

Hon. Miss LAMARSH: We do not have information of people who are deported for reasons under the Immigration Act and who do not apply for citizenship. I can think of a case about which I went to the Minister of Immigration concerning a man who had been convicted on a morals charge and was under an order of deportation. As I recall, such things are kept as a matter of record for the Citizenship Branch; but he never applied for citizenship.

Senator BROOKS: Was he a minor?

Hon. Miss LAMARSH: Yes, and he was not deported.

The CHAIRMAN: Are there any other general questions?

Senator ISNOR: Mr. Chairman, may I come back to the question of identification. Perhaps the minister can enlighten us. I recall on two occasions some years ago writing to different ministers, either during or following World War II, about cards of

identification. As you know, a social insurance card is now necessary. I think the same thing should apply to immigrants. I have in mind particularly the Chinese immigrants and the trouble you have had with them during the past two or three years. If they had identification cards I think it would save an awful lot of trouble. I am wondering if you could not give that further consideration.

Hon. Miss LAMARSH: When you refer to the trouble over the last few years, I take it you mean people who came here saying they were someone else?

Senator ISNOR: Yes; there were over 2,000 of them.

Hon. Miss LAMARSH: That is an immigration matter, of course; and they came into the country as someone else—their names were changed before they came here.

Senator ISNOR: Yes, you are right.

Hon. Miss LAMARSH: So that I am not sure that a card would have helped. They changed their identification before they came in, not after.

Senator ISNOR: In some cases parents brought in impostors and called them their sons and daughters, and so on. Some landed in Vancouver, and others came to Nova Scotia and then took residence elsewhere. If they had an identification card I think it would be very easy to follow them and make it far easier later on.

The CHAIRMAN: At that stage it would have to come from the Immigration Department.

Senator ISNOR: As a starting point.

The CHAIRMAN: Starting with immigration—with the Immigration Department.

Hon. Miss LAMARSH: We do not hear of anyone until they made application for citizenship, and the minimum time was five years after they came here.

Senator ISNOR: In other words you do not know any of these persons I have in mind until they have applied for citizenship?

Hon. Miss LAMARSH: That is correct; and even if they had a card, presumably that card would be in the false name given them before they entered.

Senator ISNOR: But if they presented that card at the time you looked into their case in order to give them their proper name, would it not be of valuable assistance to the department?

Hon. Miss LAMARSH: There is no investigation procedure.

Mr. W. R. MARTIN: Oh, no. The person must satisfy the court.

Hon. Miss LAMARSH: We do not have any RCMP surveillance or anything of that kind between the time of landing and application for citizenship. There is no procedure when one applies whereby we check their bona fides, other than the appearance before the citizenship judge or a regular country judge who interrogates them.

Senator ISNOR: We have experienced a lot of trouble, particularly in the past three years, in connection with the Chinese people. Perhaps it is their own fault because they did not register properly, but I do think that a card would have helped very much.

Hon. Miss LAMARSH: It would have to be a card issued to them as immigrants by the Immigration Department.

The CHAIRMAN: That is right.

Senator ISNOR: In any event, I put that suggestion forward in order that perhaps you will bring it to the attention of your colleagues.

Senator SMITH (*Queens-Shelburne*): They do have a card issued to them, do they not?

Hon. Miss LAMARSH: Yes, as a landed immigrant; something that they can use for proof of entry.

Senator SMITH (*Queens-Shelburne*): Would it just as valid as a social insurance card?

The CHAIRMAN: No; if you want to give any validity to that landed immigrant card, I think you would have to check it against the entry on the books of the Department of Immigration. Senator Molson is next.

Senator MOLSON: I would like to refer to clause 5 dealing with section 19, which says:

The Governor in Council may, in his discretion order that any person shall cease to be a Canadian citizen. . .

Quite a number of our young men today are joining the armed forces of the United States instead of our own. Do they automatically cease to be Canadian citizens?

Hon. Miss LAMARSH: I am informed that the answer is no. No, sir.

Senator MOLSON: Why should they not?

Hon. Miss LAMARSH: Mr. Martin informs me that, unlike the situation the other way around of Americans coming to Canada, if a Canadian who is a Canadian citizen enters the American services and takes the oath of allegiance, that does not disenfranchise him so far as Canadian citizenship is concerned. If, however, he is a person with dual citizenship who has not yet elected, and he takes the oath of allegiance, he is deemed to have elected—provided, Mr. Martin cautions me, that within that oath he renounces his Canadian citizenship. Apparently, the key is the actual renunciation, that the man must divest himself of citizenship knowingly by his renouncing the citizenship.

Senator MOLSON: How can he take an oath of allegiance to a foreign power and still maintain his allegiance to this country?

Hon. Miss LAMARSH: I suppose that he takes the oath of allegiance during the period in which he is in the service. I recall having had to take an oath when I entered IODE, which was an oath of allegiance to the Crown, and no one had inquired of me what my citizenship was. It always struck me as being rather odd, but there is a number of such agencies which have no legal responsibility as such in this field, that require people to take an oath.

Senator MOLSON: I do not think that is comparable to the oath in the armed forces of a foreign government. It would seem to me that you cannot very well bear allegiance to two different states.

The CHAIRMAN: I suppose it depends on the form of the oath you take when you are joining some service of the United States. I notice that under this section there is reference to this being a discretionary power which the Governor in Council has. What bothers me is that under subparagraph (b)(ii), one of the grounds for losing citizenship would be that the person has "taken or made an oath, affirmation or other declaration of allegiance to a foreign country." I am wondering whether there is a difference between doing what is called "taking out first papers" in the United States, which is a form of allegiance to that country, and taking an oath for the purposes of serving in the armed forces. I do not know; there may be some difference.

Hon. Miss LAMARSH: Of course, if one applies for papers, one renounces one's citizenship, and that makes him lose Canadian citizenship.

Senator BAIRD: Were there many instances of Canadians joining the United States army?

Hon. Miss LAMARSH: Yes, sir. I do not know that it comes under the minister in charge of citizenship. I live on the border and from time to time people go and join the services. There have not been so many since the recent hostilities, but there were more before that.

Senator POULIOT: Why is it that citizenship, which is so closely related to immigration, has been separated from it?

Hon. Miss LAMARSH: I am informed that citizenship once was separate for a long time from immigration. Immigration recently was considered to be so closely allied to the manpower policy of the country that one could not do much in the ebb and flow of demand for labour if one could not control immigration. That part was added to the Labour Department to make the Manpower Department.

Citizenship, we felt is a very different kind of thing and should be separated so that more attention could be paid to it. We hope to do many things to improve the idea of citizenship in the minds of the people.

Senator POULIOT: In relation to the other matter, it is very difficult to discuss citizenship without speaking of immigration.

Hon. Miss LAMARSH: In the narrow sense, as to obtaining the grant of citizenship, that is so; but citizenship, as it presently is under the Secretary of State Department, means a lot more than the grant of citizenship. We hope to evolve programs of activity which will interest people in becoming good citizens, not just citizens.

Senator POULIOT: I believe that "citizenship" is not the right definition or description of our triple status. Canada is a Kingdom, we have a Queen, and the Queen cannot be the head of a republic. The word "citizen" applies mostly to those who live in a republic. For example, the Kennedys are American citizens. We never heard the word "citizen" applied to a British subject. We do not speak of British "citizens" but of British "subjects," by way of consideration for the Queen. My idea is that the appellation "Canadian citizen" is all wrong. We are Canadian subjects of the Queen of Canada. Does the minister agree with that?

The CHAIRMAN: Parliament has seen fit to name such people "citizens".

Senator POULIOT: The minister is a personal friend of mine and I have a great deal of sympathy for her. The Act has been wrongfully drafted from the start. We are not Canadian citizens: we are Canadian subjects of the Queen of Canada. Saying that we are Canadian citizens is an encouragement to separatism.

Hon. Miss LAMARSH: I am informed that in the United Kingdom they speak of "British citizenship". It is my recollection that they passed a regulation on immigration, using this model.

I recall seeing the sign over an airport door, on entry to the United Kingdom in the last two or three years, "U.K. Citizens" and next to it is a sign which says "others" through which all other British subjects may enter, as well as aliens.

Senator POULIOT: I was born a British subject, because there was no citizenship act at the time. Then, on account of the putting into force of the Canadian Citizenship Act, I became a Canadian citizen. Not only that, I became a citizen of the Commonwealth, too. I wonder how many Canadians know that they have that triple status—Canadian citizens, British subjects, and citizens of the Commonwealth.

The CHAIRMAN: You cannot have too much of a good thing, senator.

Senator POULIOT: That is a question of opinion. I have sympathy for the minister, being in charge of an act which is absurd.

Hon. Miss LAMARSH: This is not the first absurd thing I have been in charge of.

Senator MOLSON: I would like to come back to clause 9, dealing with the proposed new section 19. Why is it that the Governor in Council "may, in his discretion. . ."? Why is it not obligatory or automatic, if a person has obtained citizenship by false representation or fraud, or by these other conditions mentioned in the section there? Why would it not be better if it were automatic? Why the discretion?

Hon. Miss LAMARSH: I think fraud or misrepresentation might not be a very important thing in the public interest. It might be, as was the case of this Chinese who came into Canada, a matter of entry into Canada under a false name; but then the person might subsequently become a good individual, live in the country and behave as

a proper citizen. You would not want such people to automatically forfeit citizenship, because their actions in this country would not be affected in any way by the fact that they had entered under false names.

I think the intention here is only to remove citizenship in the very rare case where, under some representation which is false and which is adverse to the public interest, it should be removed.

Senator MOLSON: Well, if he has made a declaration renouncing his Canadian citizenship, surely to goodness he should be taken off the list of Canadian citizens.

Hon. Miss LAMARSH: Well, I can think of some instances where it might happen as well that for some reason he was in custody in a foreign country and was required to do so. In some cases the renunciation of citizenship may be a requirement which a wife, who does not want to give up her citizenship, has to meet in her husband's interest, and, if the marriage subsequently dissolves, we would not want that person to be forever denied her own citizenship.

It seems to me that, if you bear in mind that we hope not to exclude people unless their crime has been one which in a sense continues against the state, they should be able to have citizenship.

Senator MOLSON: Do you not think it cheapens Canadian citizenship to have some of these conditions under which they can do things of their own free will and which show that they do not value their Canadian citizenship very highly, and yet we do not pay any attention to them? It does not seem to me to lead to greater respect and desire on the part of people to become Canadian citizens.

The CHAIRMAN: Senator, all this really provides is the opportunity for weighing the quality of the act that was a renunciation, or whatever it might have been. It does not predetermine the decision, but there is a flexibility because the Governor in Council can examine the facts and weigh the quality of what was done, and, if he feels that it does not measure up to an intended and absolute renunciation, then he may overlook it.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, does the Minister not have to have discretionary power, for example, with respect to Canadian citizens who are caught up in the United States draft? I think this was mentioned a while ago. I know a number of students who have "escaped" from the United States. They were over there as students because they were about to graduate, but they did not graduate. I know of two particular cases where they did not graduate because they failed in a subject. However, they were too frightened to stay on after their term at university in order to prepare themselves for supplementary examinations, because they were eligible for the draft.

Now, if one of these young men got caught up in that draft and was obliged to make a note of affirmation or declare his allegiance to the flag of the United States, surely, by virtue of a discretionary power that you must have, he would not lose his Canadian citizenship? That is just common sense to me. I do not know how important that is or how often that situation would arise within the Department of Citizenship.

Hon. Miss LAMARSH: As I explained earlier, Senator Smith, he does not automatically lose his citizenship by virtue of having taken that oath to the American flag.

Senator SMITH (*Queens-Shelburne*): Why not? Is he covered elsewhere in the act?

Hon. Miss LAMARSH: It is only in the case of wartime that, if a person serves in the forces of a nation at war with Canada and takes that oath, he then automatically loses his Canadian citizenship. In peacetime he does not.

Senator POULIOT: I have just one question. There is a provision in the bill to the effect that citizenship will lapse after an absence of 10 years from the country.

Hon. Miss LAMARSH: This act amends that.

Senator POULIOT: I know some people who were born in Canada but who have kept their Canadian citizenship by coming here occasionally. I wondered if the fact that

they lived in another country would deprive them of their Canadian citizenship which they prize very highly. Will it be sufficient for them to come occasionally to Canada to keep their own citizenship, or will they have to live for a certain time in Canada to be considered any longer as Canadian citizens?

Hon. Miss LAMARSH: Senator, section 4, which you will find on page 2 of the English copy of the bill—I do not have the French copy with me—provides that the citizen, other than natural-born, will no longer lose his citizenship if he lives outside the country for more than 10 years.

Senator POULIOT: A short visit to Canada will be enough for them to keep their Canadian citizenship.

Hon. Miss LAMARSH: It does not matter whether he makes a short visit or not. He will not lose his citizenship because he is out of the country for more than 10 years.

Senator McDONALD: What about the natural-born Canadian citizen?

Hon. Miss LAMARSH: He cannot lose it if he is native born anyway. Up to now the situation has been that if he was naturalized and went abroad for more than 10 years, he could lose his citizenship, but now that is changed under this act.

Senator ISNOR: Does the same system follow throughout the whole of Canadian citizenship courts?

Hon. Miss LAMARSH: No, sir. In parts of the country the matter of citizenship is handled by county court judges. In special places we have citizenship judges, most of whom are appointed for a term, although some are appointed at pleasure.

We have increased the number of citizenship judges of late. We have 13, I understand.

Senator ISNOR: I wanted to put that on the record, because in Nova Scotia we have not experienced the situation mentioned by Senator Willis in his criticism of the judges. We think highly of our judges in Nova Scotia. I have in mind particularly Judge Allie Ahern, who was recently appointed. She has already gained a reputation for herself in her fine manner of handling cases, and she does give instructions to those who come before her seeking citizenship papers.

Hon. Miss LAMARSH: I agree with Senator Willis and with everyone else that the greatest single quality for a citizenship judge is compassion.

Senator ISNOR: Yes, that is why I want to take exception to the remarks, in so far as Nova Scotia is concerned, and particularly so far as Judge Ahern is concerned. She does an excellent job.

Hon. Miss LAMARSH: I rather think that Senator Willis' remarks were about non-citizenship judges; that is, about regular federal judges doing regular federal work.

Senator ISNOR: Perhaps he has in mind the Province of Ontario.

Hon. Miss LAMARSH: Some judges consider it an irritation and an abomination. They do not want to do it. Therefore, where possible, we are moving to put in people whose principal concern is the question of citizenship.

The CHAIRMAN: Senator Isnor, you have certainly succeeded in getting it out of Nova Scotia in any event.

Senator ISNOR: Thank you.

Hon. Miss LAMARSH: I am very pleased with Judge Ahern, for whose appointment I was responsible. If I may say so I think it augurs well for the appointment of more women in this particular field.

Senator SMITH (*Queens-Sherburne*): Mr. Chairman, may I ask why we do not have all citizenship courts similar to that court in Nova Scotia to which Senator Isnor referred? Perhaps Judge Ahern is an exceptional person, but I endorse what he said about her. She is a wonderful person who has performed her functions in a manner I

consider ideal. Why do we not stop the county court judges from functioning as citizenship court judges and have the citizenship courts all over the country staffed by people of the caliber of Judge Ahern?

Hon. Miss LAMARSH: We are trying to do that gradually, senator. It is partly expense, partly convenience. In some of the heavily populated parts of the country to have a citizenship judge in a sort of central area would mean that citizens might have to go 50 or 100 miles to obtain citizenship. This is a discouragement to them, whereas if one uses the local county court judges one can do it within 10 or 20 miles. It is my hope that we will eventually have a network of citizenship judges across the country.

Senator SMITH (*Queens-Shelburne*): Well, Judge Ahern travels hundreds of miles to citizenship courts in Nova Scotia.

The CHAIRMAN: Hundreds of miles?

Senator SMITH (*Queens-Shelburne*): Well, perhaps not, but considerable distances. I think this is a wonderful thing to get into.

The CHAIRMAN: Shall we take the bill section by section? Shall section 1 carry? Carried.

Shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: And now at this point the department is proposing an amendment which will come in at the top of page 2, as subsection (4) immediately following subsection (3) which has that black line indicating that it is new, and this amendment would read as follows:

(4) Subsection (8) of section 10 of the said act is repealed and the following substituted therefor:

Now subsection (8) of section 10 reads as follows:

(8) Subparagraph (i) of paragraph (c) of subsection (1) does not apply to a person who has resided continuously in Canada for a period of one year immediately preceding the 1st day of June, 1956, and had been admitted to Canada for permanent residence prior to the thirty-first day of December, 1956, and, in addition, has also resided in Canada for a further period of not less than four years during the six years immediately preceding the 1st day of June, 1953.

The amendment, part of which I have already read, is to provide that this—

(8) Subparagraph (i) of paragraph (c) of subsection (1) does not apply to a person who

(a) has resided continuously in Canada for a period of one year immediately preceding the 1st day of June, 1956, and had been admitted to Canada for permanent residence prior to the 31st day of December, 1956 and, in addition, has also resided in Canada for a further period of not less than four years during the six years immediately preceding the 1st day of June, 1953; or

(b) acquired Canadian domicile before the coming into force of this paragraph.

Hon. Miss LAMARSH: This amendment is put forward because we realized we were cutting out those who had already qualified or who were entitled to be qualified under the law as it presently stands. This is simply tidying the matter up so as to make sure that we don't cut that group out.

The CHAIRMAN: The part marked (b) is the new part, and the part marked (a) is the part presently in the act.

Senator MOLSON: I move the amendment.

Hon. SENATORS: Carried.

The CHAIRMAN: The other sections of the bill have been pretty thoroughly gone into and discussed. I will call them and if you have any questions to ask about them you can ask them.

Section 3. Any questions?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 4; we discussed that a few minutes ago. This involves a complete change to equate the naturalized Canadian with the native-born Canadian in regard to the question of loss of citizenship. Shall this section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 6 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 7 carry? This is mainly procedural.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 8. In a sense I think this could also be described as being procedural.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 9.

Hon. Miss LAMARSH: This is also just a tidying-up section.

The CHAIRMAN: This is to make assurance doubly sure that Newfoundland gets all the benefits of being part of Canada. It also extends the founding provisions to Newfoundland which were heretofore enjoyed by the rest of Canada. Shall section 9 carry? Carried.

Shall section 10 carry?

Senator BURCHILL: The Citizenship Appeal Court will sit, I take it, in Ottawa?

The CHAIRMAN: They can move around.

Senator BURCHILL: This is new?

Hon. Miss LAMARSH: Yes.

The CHAIRMAN: Shall section 10 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 11 is the penal section. Shall it carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 12 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 13 is just an amendment to the French version. Shall section 13 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Carried.

The Committee adjourned.



First Session—Twenty-seventh Parliament
1966-67

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 44

Complete Proceedings on Bill C-60

intituled: "An Act to amend the Food and Drugs Act".

WEDNESDAY, APRIL 26th, 1967

WITNESSES:

Department of National Health and Welfare: Dr. A. C. Hardman, Director,
Bureau of Scientific Advisory Services. J. D. McCarthy, Legal Adviser.
Royal Canadian Mounted Police: Inspector J. A. Macauley, Criminal In-
vestigation Branch.
Department of Justice: N. M. Thurm, Legislation Section.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Isnor	Reid
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	Macnaughton	Vien
Farris	McCutcheon	Walker
Fergusson	McDonald	White
Flynn	Molson	Willis—(47)

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, April 25th, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McDonald, seconded by the Honourable Senator Gershaw, for second reading of the Bill S-60, intituled: "An Act to amend the Food and Drugs Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Gershaw, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,

Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, April 26th, 1967.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Benidickson, Blois, Burchill, Croll, Fergusson, Gershaw, Gouin, Irvine, Isnor, Kinley, Leonard, McDonald, Molson, Rattenbury, Smith (*Queens-Shelburne*), Thorvaldson and Vaillancourt. (21)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel and R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief Clerk of Committees.

On Motion of the Honourable Senator Thorvaldson it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-60.

Bill S-60, "An Act to amend the Food and Drugs Act", was read and considered, clause by clause.

The following witnesses were heard:

Department of National Health and Welfare:

Dr. A. C. Hardman, Director, Bureau of Scientific Advisory Services.
J. D. McCarthy, Legal Adviser.

Royal Canadian Mounted Police:

Inspector J. A. Macauley, Criminal Investigation Branch.

Department of Justice:

N. M. Thurm, Legislation Section.

At 11.00 a.m. the Committee adjourned consideration of the said Bill until 1.30 p.m. this day.

At 1.30 p.m. the Committee resumed consideration of Bill S-60.

Present: The Honourable Senators Hayden (*Chairman*), Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Choquette, Croll, Fergusson, Flynn, Gershaw, Irvine, Kinley, Leonard, Molson, Smith (*Queens-Shelburne*) and Willis (15).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel and R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief Clerk of Committees.

Mr. J. D. McCarthy was again heard with respect to the said Bill.

Two amendments were then moved as follows:

1. The Honourable Senator Molson moved the following amendment:

Page 2: Strike out lines 22 to 32, both inclusive, and substitute therefor the following:

"41. (1) No person shall traffic in a restricted drug or any substance represented or held out by him to be a restricted drug.

(2) No person shall have in his possession any restricted drug for the purpose of trafficking.

(3) Except as authorized in this Part or the regulations, no person shall promote the use of or trafficking in a restricted drug.

(4) Every person who violates subsection (1), (2) or (3) is guilty of an offence and is liable

(a) upon summary conviction, to imprisonment for eighteen months; or

(b) upon conviction on indictment, to imprisonment for ten years."

2. The Honourable Senator Croll moved the following amendment:

Page 4: Strike out lines 6 to 11, both inclusive, and substitute therefor the following:

"(3) In addition to the regulations provided for by subsection (1), the Governor in Council may make regulations

(a) authorizing the possession or export of restricted drugs and prescribing the circumstances and conditions under which and the persons by whom restricted drugs may be had in possession or exported, and

(b) defining for the purposes of subsection (3) of section 41 the word "promote" and prescribing the circumstances and conditions under which and the persons by whom the use of restricted drugs may be promoted."

The question being put on the above Motions, they were declared *carried*.

On Motion of the Honourable Senator Croll it was *Resolved* to report the said Bill as amended.

At 1.50 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, April 26th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-60, intituled: "An Act to amend the Food and Drugs Act", has in obedience to the order of reference of April 25th, 1967, examined the said Bill and now reports the same with the following amendments:

1. *Page 2*: Strike out lines 22 to 32, both inclusive, and substitute therefor the following:

"41. (1) No person shall traffic in a restricted drug or any substance represented or held out by him to be a restricted drug.

(2) No person shall have in his possession any restricted drug for the purpose of trafficking.

(3) Except as authorized in this Part or the regulations, no person shall promote the use of or trafficking in a restricted drug.

(4) Every person who violates subsection (1), (2) or (3) is guilty of an offence and is liable

(a) upon summary conviction, to imprisonment for eighteen months; or

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"(3) In addition to the regulations provided for by subsection (1), the Governor in Council may make regulations

(a) authorizing the possession or export of restricted drugs and prescribing the circumstances and conditions under which and the persons by whom restricted drugs may be had in possession or exported, and

(b) defining for the purposes of subsection (3) of section 41 the word "promote" and prescribing the circumstances and conditions under which and the persons by whom the use of restricted drugs may be promoted."

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, April 26, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-60, to amend the Food and Drugs Act, met this day at 9:30 a.m. to give consideration to the bill.

Senator **SALTER A. HAYDEN** in the Chair.

The **CHAIRMAN**: I call the meeting to order. We have Bill S-60 before us this morning for consideration.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

Appearing before the committee this morning from the Bureau of Scientific Advisory Services of the Department of National Health and Welfare is Dr. A. C. Hardman, the Director, and Mr. J. D. McCarthy, the Legal Adviser. Mr. N. M. Thurm, of the Legislation Section of the Department of Justice is present, as is Inspector J. A. Macauley, of the Criminal Investigation Branch, Royal Canadian Mounted Police. These gentlemen are well equipped to answer any questions that the members of the committee have.

I suggest that we have all our questions answered at this stage, after which we can deal with the bill section by section. Does that meet with the approval of the committee?

Senator **ROLL**: If we are allowed to ask questions at this stage, then let me ask one.

The **CHAIRMAN**: Very well.

Senator **ROLL**: Dr. Hardman, where is the greatest incidence of LSD found in this country? Where did the incidents occur?

Dr. A. C. Hardman, Director, Bureau of Scientific Advisory Services, Department of National Health and Welfare: Mr. Chairman and members of the committee, we have evidence through the police reports that LSD is available primarily in Vancouver and Toronto, although there is evidence that it is available also in Edmonton, Calgary, Saskatoon, Regina, and Montreal—not to as great an extent in Montreal, and to a lesser extent in the Maritime provinces.

Senator **KINLEY**: Did you say it was available in the Maritimes?

Dr. **HARDMAN**: Yes, I believe there was one incident in Halifax, but I stand subject to correction.

Senator **KINLEY**: I have not heard of any.

Senator **ROLL**: When did it first come to the attention of the authorities—let us start with Vancouver—and where do you suspect the movement came from?

Dr. **HARDMAN**: LSD has been available since 1939. It has been available in Canada since about 1952 in limited research. It was only about 1962 that we had some

evidence that it was serious and liable to abuse. This was at the time that Dr. Alfred and Dr. Leary in Harvard were trying to distribute this outside the legitimate bonds of research. In 1962 LSD was taken into our legislation and the sale was banned. However, we did make supplementary regulations which permitted its continued use in research. But it has only been since the period of 1964-65 that we have had any widespread evidence of the abuse of this drug in the urban areas.

Senator CROLL: Do you say in 1964-65 in Vancouver?

Dr. HARDMAN: Yes, sir.

Senator CROLL: And in Toronto?

Dr. HARDMAN: Yes, sir.

Senator CROLL: When in Toronto?

Dr. HARDMAN: About the same time. Evidence of abuse came up at the same time that proponents of LSD were proselytizing us across the country and a number of articles were appearing in the press and magazines.

Senator CROLL: What I am trying to get at is this: Let us think of Vancouver and Toronto. Start with Vancouver, if you like, first. How did that come to your attention?

Dr. HARDMAN: This came to our attention in two ways. A report came out of Toronto about a girl who went out of the eighth or ninth floor of the Park Plaza Hotel, and it was reported in the investigation that she was at an LSD party. At the same time, the psychiatrists who had been servicing the emergency department were reporting the odd cases of individuals coming in with an acute psychological breakdown, if not in an acute panic or fear state resulting from their history of having taken LSD. Either their friends brought them in or if they were able to do so they came in themselves, or perhaps a wife or husband brought them in. This is the only evidence we have as historical. One cannot take samples from the individual as one can for alcohol, and determine that the person's behaviour is directly caused by LSD. But if his behaviour is unusual and gives a history of taking LSD, one draws the conclusion.

Senator CROLL: This is what is running through my mind. As I recall it, LSD had been used and acquired in California, particularly at the university level, when it came to our attention?

Dr. HARDMAN: That is correct, sir.

Senator CROLL: Then it moved up to Vancouver, as these things have a habit of doing?

Dr. HARDMAN: That is correct.

Senator CROLL: Toronto was a little different. I am told, and you correct me if I am wrong, that many university people who came over from the United States to Canada, commonly called "draft dodgers," brought it with them. They brought the ideas and did some of the selling in order to be able to live. That is the rumour in the Toronto area—in the Yorkville area, if you like. What do you say about it? What is your comment?

Dr. HARDMAN: This would have to be an opinion. I think the movement of American university students to avoid the draft was a later phenomenon which may have contributed to the more expansive spread. From information available to us, this originally did not begin with the universities, but more with the fringe social group. Then it rapidly spread into university and high school usage.

Senator CROLL: I noticed an advertisement in the press indicating that it has high school usage in Toronto.

Dr. HARDMAN: Yes, we had two reports of this.

Senator CROLL: You spoke of other cities. I think you mentioned Edmonton. Where would you find usage there?

Dr. HARDMAN: Primarily in the university now. These were late developments at the high school level.

Senator CROLL: At the university and high school levels. Is this being brought to the attention of the authorities at the university level? Is there nothing they can do—no discipline?

Dr. HARDMAN: Yes, there is discipline. What you are asking me here is to comment on the attitude towards university discipline, which I am really not competent to do. At the moment there is no offence, so that unless this incident comes to the attention of the university authorities through their own university health service or through the press, it is unlikely they will take disciplinary action.

Senator CROLL: But if it comes to the attention of the Criminal Investigation Branch of the R.C.M.P. that it is being used by students at one of our universities, would they not bring it to the attention of the appropriate university authorities?

Dr. HARDMAN: I am aware that this has been discussed in Saskatchewan because of the concern of university authorities. However, I cannot answer whether the behaviour of any individual student has been drawn to the attention of the disciplinary body of the university.

The CHAIRMAN: I do not think Senator Croll meant any individual student.

Senator CROLL: No; it is becoming prevalent.

Dr. HARDMAN: There has been discussion with university heads both in British Columbia and Regina, to my knowledge, about the matter.

Senator CROLL: Whatever reading material there is seems to indicate that the greatest abuse in the United States is at the university level, and that seems to be the case here. To what do you attribute that, and what is your comment on that?

Dr. HARDMAN: This is a drug abuse; it is a social phenomenon rather than a medical phenomenon. I think this is perhaps a part of changing social values. Our value system in our society has been strongly influenced, well, largely at the university level. It is not unique in Canada, but this has been the pattern of unrest and social revolt at the university level in all countries. In South American countries it has been carried to actual revolution rather than social unrest. I think this group of individuals is probably at the most active period of their life of rebelling against rules and society, that initially they came to experiment and sometimes the experimentation got away with them. They are experimenting with a substance that is too powerful for them.

When I was a teenager they used to say that if you took an aspirin with a drink of Coca-Cola you would have a wonderful time. The people who did this had a wonderful time. There is no medical reason for this, except natural exuberance. However, people are now dealing with extremely potent chemicals. They could not come to any harm with an aspirin and a Coke.

One of the significant factors about the use of drugs of this type is that the experience which results is influenced by the environment in which you take it, particularly LSD, with a controlled person who knows what he is doing. A person is very prone to suggestion under the influence of this drug. An experienced guider like a psychiatrist can guide you away from some of the danger areas, by suggestion.

The second factor which influences a person's experience is his own personality. If he has a marginal psychiatric condition, he can be precipitated into a full-blown mental breakdown.

The third factor, strangely enough, is what the user expects to get from it. If you have heard stories and rumours about LSD having a wonderful effect on your sex life or on mind expanding, or if you have a religious connotation and you expect to go through a mystical religious experience, you tend to do that. These three factors all tend to influence it. That was a rather long answer.

Senator CROLL: We are getting information, and this is all very useful because we are trying to understand this. Is it more prevalently used amongst male or female?

Senator SULLIVAN: About equal.

Dr. HARDMAN: I would agree with Senator Sullivan that it is about equal. This is a social phenomenon and it is contagious, in a way. You do not obtain supplies of LSD from some mysterious person on the corner: you get it from a "friend".

The other characteristic of this is that if you are using LSD you want to proselytize, you want to bring your acquaintances and friends into drug usage. In other words, "if you do not use the drug, you are nothing, you are not part of our society." These immature individuals, under this pressure of their peers, tend to experiment with the drug. This is the pattern, not only of this, but in the narcotic field. It is pressure from your friends and a lack of maturity of yourself, that leads to drug experimentation.

Senator CROLL: You have been talking about the social aspect. Is there a medical aspect in here that we should be aware of?

Dr. HARDMAN: The hazards?

Senator CROLL: Is there anything we can do about it?

Dr. HARDMAN: There is medical treatment for an acute panic reaction. You can stop the experience. But the abuse of the drug by a person who is not too stable may precipitate a permanent psychosis or mental breakdown, as Senator Sullivan described.

Senator SULLIVAN: Dr. Frosch has just made that statement at Bellevue, New York, and I tried to bring that to attention in the Senate the other day. It is very fact finding.

This is an experimental drug, is that correct?

Dr. HARDMAN: That is correct.

Senator SULLIVAN: There is some doubt about this in the minds of honourable senators. A statement was made yesterday rather dogmatically that this is not a habit-forming drug. How does the department treat that aspect of it?

Dr. HARTMAN: The World Health Organization is changing its terminology, and we agree with their definition. Rather than calling drugs "addicting" or "habit-forming," they are describing them as "dependency-producing". This drug falls into a category of psychologically "dependency-producing". There is no evidence at the moment that one develops physical withdrawal symptoms. However, one does develop tolerance to the drug.

If I may assimilate between marijuana and heroin, with heroin you have to take increasing doses to get the same effect. If you have been using heroin for a period of time you then have physical symptoms when the drug has ceased. With marijuana, you do not develop tolerance and you do not have physical withdrawal symptoms. However, with LSD you do develop tolerance, in that you must have—if you are on consecutive days—an increasing dosage to get approximately the same effect, for up to three or four days, but you do not get physical withdrawal symptoms.

Senator CROLL: What do you mean by "physical withdrawal"?

Dr. HARDMAN: In the case of heroin, for example, an individual who has been physically addicted or who has been depending on heroin—a heavy addict—will become almost a vegetable. He has acute nervous frustration, his skin is crawling, he is sick to his stomach, and he cannot function in society.

One of the interesting things about heroin is that we are no longer seeing the very highly addicted person, the one who, ten years ago, was a sick man when he stopped taking the drug. If you stop an individual now from using heroin he is not sick; he may complain a lot but he is not as sick as was the user of ten years ago.

Senator SULLIVAN: Pursuing this thought further, for information purposes, we know that narcotics such as morphine, heroin, and so on, do not produce what we call pathological changes within the brain that we can see under the microscope, yet at the same time they are habit forming.

Dr. HARDMAN: That is correct.

Senator SULLIVAN: There has been very recent information which has come out on this, if we have to give it a little different terminology, that LSD is acting in the same way as alcohol, which does produce permanent brain damage. I think this is a most important point. I would not like this to go from the Senate saying that this is a non-habit forming drug.

Dr. HARDMAN: Sir, I disagree with you; it is not a physically addicting drug.

Senator SULLIVAN: All right.

Dr. HARDMAN: It is not physically addicting. There is evidence of two types that long-term usage of LSD may lead to permanent damage.

Senator SULLIVAN: That is right.

Dr. HARDMAN: The one is an actual alteration in the chromosomic picture, which is the hereditary factor in cells. This is fragmentary evidence and has not been documented, and has not been reproduced elsewhere, so I mention it in passing.

Along with that, there is some evidence that continuous uses, people using 300 or 400 "trips," tend to have the ability to perform the psychological tests at the level they performed them prior to starting on the drug.

Senator SULLIVAN: Thank you.

Senator THORVALDSON: May I pursue another phase of the subject. I would like to ask Mr. McCarthy a question, in regard to the reason why this legislation was not put under the Narcotics Control Act. Instead of that, you are presumably taking a new type of procedure, which you will apply first, as I understand it, to LSD, but which it is expected may have added to it various other drugs, namely, in Schedule J. Would it not have been a better procedure to make control of this drug part of the Narcotics Control Act?

Mr. J. D. McCarthy, Legal Adviser, Department of National Health and Welfare:

Mr. Chairman and honourable senators, this was a matter which was considered very carefully when the legislation was being devised, namely, the advantages and disadvantages of adding this to the schedule of narcotics in the Narcotics Control Act.

Actually, lysergic acid, as I understand it—I am neither a technician nor a doctor—has never been recognized as being in the same family at all as narcotics, either internationally or in Canada. That is the first point.

In the second place, the acid itself, as I understand it, is not a drug within the definitions contained in the Narcotics Control Act. It is a substance, but it is that substance, and the base for the production of LSD, that we are trying to get at. Primarily I think it is a fact that LSD does not fall into the family of narcotics and has not been recognized internationally as in that group of substances.

Senator THORVALDSON: However, was there not a committee of the United Nations which considered this problem in an international way some time ago, and is it not an international problem in the same manner as narcotics?

Mr. MCCARTHY: I believe that is so. From my understanding, they recognize and commend that approach, because otherwise it would make an inroad into the basic concept of control of narcotics as such. This is a distinct substance.

Senator THORVALDSON: You might answer this question, Mr. McCarthy: is it intended that the police and legal machinery of the Narcotics Control Act will be used for the purposes of enforcing the provisions of this part of the Food and Drugs Act?

Mr. MCCARTHY: No, I do not think so. This part of the Food and Drugs Act has its own enforcement and management provisions, and it picks up other provisions that are already enacted in connection with control work in the Food and Drugs Act now. So we have a parallel set of machinery for the control and enforcement of this law to that contained in the Narcotics Control Act.

Senator THORVALDSON: Would you say that the enforcement people, in their procedures under the Food and Drugs Act, have as much expertise as those who

enforce the Narcotics Control Act? I am thinking of the R.C.M.P. and the whole machinery under that act.

Mr. McCARTHY: Yes. I think this is what will happen: the present enforcement authorities will assume responsibility for the administration of this part.

Senator THORVALDSON: Do you use the services of the R.C.M.P. under the Food and Drugs Act?

Mr. McCARTHY: Yes.

Senator THORVALDSON: So, actually it is safe to say that it would be brought pretty well within the same type of scope.

Mr. McCARTHY: I believe that is true, yes, sir.

Senator MOLSON: Has consideration been given to whether it is possible to check the promotion of LSD and marijuana, which apparently are being promoted in some shops in Yorkville, and so on, where in effect they are advertising accessories that help you take a "trip" and make it more wonderful, and so on.

Senator McDONALD: You might call them "travel agencies".

Mr. McCARTHY: Well, under the legislation we have now marijuana is of course limited under the Narcotics Control Act. As far as LSD is concerned, as yet consideration has not been given to the control or to the availability of measures for controlling the advertising of LSD, for instance, until this act comes through.

Inspector Macauley may be able to give some useful information on this from the experience he has gained so far.

The CHAIRMAN: Inspector Macauley, do you have anything to add on this particular point?

Inspector J. A. Macauley, Criminal Investigation Branch, Royal Canadian Mounted Police: On the advertising?

The CHAIRMAN: Yes. Of course, I understand that you have not the authority of legislation as yet.

Inspector MACAULEY: There is no authority whatsoever for us to do anything.

The CHAIRMAN: Let us just project your ideas a little bit and presume there is authority. How will the enforcement proceed?

Inspector MACAULEY: Well, once we have a possession charge for the illegal possession of LSD, we may be able to take some steps to control it. But so far as advertising is concerned, I do not feel this would be necessary. We could take some action in so far as illegal possession is concerned, though.

Senator CROLL: We could attack it on the basis of false advertising, Mr. Chairman: it does not do what it says it does. May I ask Dr. Hardman a question on another point? Can you identify an age group?

Dr. HARDMAN: Yes.

Senator CROLL: What is it?

Dr. HARDMAN: It is 16 to 24, but it is now going down as low as 11.

Senator CROLL: Then you are getting the high schools?

Dr. HARDMAN: That is correct, in Vancouver.

Senator CROLL: Is there much use in that age group?

Dr. HARDMAN: No, sir. Statistics are very difficult to obtain on this, because both sides of the argument are interested in inflating the statistics. The proponents are claiming wide statistics and, on the other hand, the natural tendency for us would be to say that 10 per cent of the students are using it. We have no evidence of the quantitative use, however. The only evidence we have is what is turning up in the emergency wards in the hospitals.

Senator CROLL: Yes. Well, the Board of Education of the City of Vancouver issued an advertisement. Do you know about that?

Dr. HARDMAN: Yes, sir.

Senator CROLL: That was useful.

Dr. HARDMAN: Yes, sir.

Senator CROLL: Why has not the Board of Education in Toronto—or Edmonton or Regina or wherever you like—issued a similar sort of advertisement?

Dr. HARDMAN: One of the difficulties here has been access to resource material. There have been in excess of 5,000 professional articles on this; there have been innumerable lay articles; and my bureau at the present time has a task force engaged in preparing a resource document giving the factual picture on LSD for the use of health educators. Now, in the City of Ottawa at the request of the Board of Education, I have spoken to some of the high schools. I will be speaking in June to the physical health education teachers who conduct the health course, and they intend, I understand, to implement an educational program in the high schools.

It is my opinion that these boards of education have found it too difficult to get factual information from an authoritative source, and we hope to remove that problem. We realize that legislation alone is not going to stop abuse.

Senator CROLL: I understand from reading the newspapers that there is a certain doctor in Toronto, who has many views on many subjects, who said that there are 15 or 20 other similar drugs that are available and which will do the very same thing.

Dr. HARDMAN: Yes, sir. There are 25.

Senator CROLL: Twenty-five? Well, do not name them, please.

Dr. HARDMAN: Some of them are much more serious than LSD in their effects, but they are not in common usage. Those that are commonly known are peyote buttons from the cactus—and these have been picked up in Canada; mescaline; two derivatives of the sacred mushroom of the Aztecs: psilocybin and psilocin; and DMT, dimethyl-tryptophane. These are not a problem yet.

I think these have been the reason for our approach to set up a mechanism so that we can deal with a problem as it arises. We are discussing LSD. That is the first drug on the schedule, but the act itself is a mechanism for dealing with this type of thing.

Senator CROLL: But, doctor, the criticism being made is that we wait too long and the thing is having its effect before we then come along with legislation. Then comes the other aspect: that these belong in the hospital, and so on. All of these arguments contain part truths. In this act, if there are other drugs that have or could have the same effect, why do you not incorporate a section allowing them to be added by an order in council?

Dr. HARDMAN: That is there, sir.

Senator CROLL: Oh, I am sorry. I missed that, then.

Dr. HARDMAN: We made a decision in introducing the act that rather than list a schedule of 25 drugs, for purposes of discussion it would be easier to talk on LSD.

Senator CROLL: I am sorry. Taking a normal, middle-aged person—leave us out of it for a moment, though we are all normal and middle aged—you described some effects, having a religious effect, a sexual effect, and so on. What effect would it have on a middle-aged person? You see, we are not in that age group which you suggested. What effect would it have?

Dr. HARDMAN: In an adequate dosage, which is about 100 micrograms, you will experience visual distortions, as described by Dr. Sullivan. However, your interpretation of what you see and what you experience will differ from that of the younger person. With a person who is mature and has a stable mentality, there is not nearly the same abnormal reaction to the drug. You have built up your own defences and, therefore, you may interpret an experience as not being threatening to you; you may recognize that it is not threatening, whereas a younger person who has not had this experience or maturity may interpret something as being extremely hazardous.

There is one characteristic of this drug which is called depersonalization, and this is a difficult concept to explain. A person may have the impression that he is totally outside his body, and he may have the impression that he has shrunk to six inches high. He gets distortion in what the psychiatrists call the body image. Each one of us carries within himself a certain mental picture of his own body. If you get a distortion of that picture or of this body image, it can be extremely anxious in an unstable person. When they describe a trip, some of these people physically feel they have left their body and having left their body they can project themselves down and see themselves. Then they can get off on a trip. This is a type of mental aberration that can occur.

Senator CROLL: How long does it last?

Dr. HARDMAN: Normally eight to 12 hours depending on the dosage. There are those people who do not come out of it for 36 or 48 hours, and in fact may require some treatment.

Senator CROLL: And when they do return are they the same as they were before?

Dr. HARDMAN: There is argument about this. There is evidence that people have had further hallucinations without further exposure to the drug. They may be driving along in the car six months or a year afterwards and they may start hallucinating. Of the individuals who have experienced the drug some say it has not changed them at all. But if a person expected to be changed, then he says he has been changed. So far as we can discover or determine there has been no distinct change in their subsequent behaviour. They may feel that they are a better man or a better woman, but the behaviour pattern does not change.

Senator CROLL: We have at government level made some experiments with this over a period of time, I am told. And these experiments have been made on mature people?

Dr. HARDMAN: That is correct.

Senator CROLL: And disciplined people. What have been the findings or the conclusions as a result of this?

Dr. HARDMAN: Well, the findings in this area have been that for the period when they are under the direct drug influence, they cease to function effectively. They are unable to participate in social living during that period of time. Their judgment is impaired and they focus on bizarre situations. The rate of psychiatric breakdown in carefully screened subjects is twice that of a normal breakdown in the population, and these people have been screened and looked for on the basis that they do not have any apparent tendency to schizophrenia. The normal rate of breakdown is somewhere between four and six in a thousand. This is the on-going rate of admissions to hospital. Out of every thousand Canadians, four people will have a psychological breakdown. In these carefully screened subjects there were more than eight in a thousand breaking down. If one extrapolates this to using this drug in a group who have not been screened, I would suggest the rate of breakdown is much higher. But since we do not know how many are using the drug, we cannot give statistics.

Senator GERSHAW: Do you have any information concerning the cost of manufacture of this drug. And, secondly, where does it come from?

Dr. HARDMAN: It is available from two sources. It is available in the United Kingdom and other European countries where the drug is produced by companies, and in those cases the drug is relatively pure. In the United States there are several sources of illicit manufacture of LSD. The illicit product we have analysed has been about between 10 and 15 per cent active substance, and the rest is all impurities. The remaining 85 per cent consists of impurities that may or may not have a major action in this area.

The CHAIRMAN: They are not just a dilution?

Dr. HARDMAN: No, sir. When one undertakes any production of a drug one has to take out the solvents, the by-products, in order to obtain a pure drug which can be

used. This procedure contributes to the cost of the drugs—if I may interject that here. This need for purification and the removal of contaminants adds to the cost.

Senator BAIRD: Can you taste it or smell it?

Dr. HARDMAN: No.

Senator SULLIVAN: You are making the point that they have to obtain the pure drug illicitly and then dilute it and manufacture it in some way?

Dr. HARDMAN: No. If they are smuggling in the drug from Europe generally they are bringing in the relatively pure drug.

Senator SULLIVAN: In liquid form?

Dr. HARDMAN: In a liquid solution at times, but this dissipates quite rapidly. Normally it is brought in in powder form or tablet form. In the United States it is manufactured from lysergic acid, and in the ethylation process the by-products are not removed.

Senator SMITH (*Queens-Shelburne*): Is there some evidence that trafficking in this drug is a profitable racket up to this point?

Dr. HARDMAN: Again I would have to direct that question to Inspector Macauley. I understand the price of a capsule is somewhere in the region of \$5.

The CHAIRMAN: How many "trips" for \$5?

Dr. HARDMAN: This would be one capsule, sir. I would say it would cost about 50 cents to produce this capsule.

The CHAIRMAN: I take it the return "trip" is not guaranteed.

Dr. HARDMAN: No, sir. This is one of the areas that constitutes a hazard.

Senator SMITH (*Queens-Shelburne*): I would like to know whether there is any evidence at all that the kind of people who in the past have been trafficking in narcotics are beginning to be involved in this particular trafficking?

Dr. HARDMAN: I would ask that that question be directed to Inspector Macauley.

Inspector MACAULEY: Yes, this is one of our concerns. We have been concerned about the fact that since 1963, or thereabouts, we know that many of our criminal traffickers are working in this direction. There is evidence that they are interested in the profits that can be made.

Senator CROLL: An ounce of this would be considered a great quantity, would it not?

Inspector MACAULEY: It would be.

Senator CROLL: Well, we all understand an ounce. When diluted what would an ounce cost?

Inspector MACAULEY: This is a question I cannot answer. When we see it, it is in the illicit form.

Senator CROLL: Well, can Dr. Hardman tell me?

Dr. HARDMAN: I would have to calculate that. An ounce is something like 200,000 capsules.

Senator CROLL: Yes.

The CHAIRMAN: At \$5 a piece.

Dr. HARDMAN: I would think that in a pilot plant, if they were starting off from scratch, it would be an ounce for \$50,000. If they were in continuous production they would reduce that price.

Senator CROLL: According to what we hear it would produce a quarter of a million "trips."

Dr. HARDMAN: Yes, that is reasonable.

Senator CROLL: I have seen the suggestion made it would be between \$3 and \$5 a "trip." That is about the finance of it?

Dr. HARDMAN: Yes. Inspector Macauley, what is the price?

Inspector MACAULEY: The price varies between \$5 and \$15, and has gone as high as \$20 per dose.

Senator CROLL: The press reports indicate between \$3 and \$5, and they are wrong?

Inspector MACAULEY: It varies. It has been known to us to reach as high as \$20, but we take as a reasonable average between \$5 and \$15.

Senator SULLIVAN: The press is often wrong, senator.

Senator SMITH (*Queens-Shelburne*): I gather that the racketeering type of individual is contemplating getting into the racket. What kind of people do you have knowledge of who have been trafficking in the drug?

Inspector MACAULEY: Our investigations disclose that they are the same traffickers who traffic in the hard narcotics of heroin and marijuana.

Senator SMITH (*Queens-Shelburne*): The reason I ask this sort of question is that the bill, in its present form, provides for pretty severe punishments for those caught trafficking. I am wondering whether the bill would catch up with some misguided university student or a junior teacher at a college, say, who is purely amateurish and is doing it for kicks. That is not the kind of person you are after. If we trip up people like that it would be an exception from the people you are trying to get in your net?

Inspector MACAULEY: Yes, we are after the well-established drug traffickers.

Senator CROLL: But the well-established drug trafficker never did any business in university circles; that was not his field.

Inspector MACAULEY: If it is smuggled into the country, it is bound to get down to the universities.

Senator CROLL: The narcotic never was a problem at the university level.

Inspector MACAULEY: No.

Senator CROLL: If it is the narcotic peddler you are after; he never had much contact with universities.

The CHAIRMAN: He is diversifying now, senator.

Senator CROLL: That is true, is it not?

Inspector MACAULEY: Not directly with universities.

Senator SULLIVAN: But he eventually will.

Inspector MACAULEY: He does not associate with the student group, but it filters down to them.

Senator CROLL: You say that he is entering that field, or is about to enter that field?

Inspector MACAULEY: He has entered the field.

Senator CROLL: Usually in my own mind I associate narcotics with an older age group than 11 to 16 to 24. That has always been my association.

Inspector MACAULEY: Fifteen to 20 years ago that was correct, but now, with marijuana and one thing and another, the age group is coming down.

Senator McDONALD (*Moosomin*): Is marijuana being used by university students?

Inspector MACAULEY: It has been.

Senator McDONALD (*Moosomin*): Is the incidence of its use going up in our universities?

Inspector MACAULEY: No.

Senator McDONALD (*Moosomin*): Maybe I did not ask that question very well. Narcotics are pretty well under control in our country, and have been for some time?

Inspector MACAULEY: Hard narcotics, yes.

Senator McDONALD (*Moosomin*): When you say that the average age of the user of narcotics is coming down, would that indicate that its use is getting prevalent in our universities? Suppose there is one case in a thousand now, whereas there was one case in two thousand ten years ago.

Inspector MACAULEY: I am talking about the age group in which marijuana is concerned.

Senator McDONALD (*Moosomin*): University or otherwise.

Inspector MACAULEY: Yes, university or otherwise.

The CHAIRMAN: Would an LSD user be likely to graduate to the hard drug?

Inspector MACAULEY: All I can give you on this would be an opinion; through association it is quite possible.

Senator CROLL: Dr. Hardman, you told us you move around certain circles in Ottawa and that you are going to meet some of the leaders in the physical training groups. Do you not think it would be wise at this time for the department to suggest to the various school boards that they do what was done in Vancouver by way of letting the housewife, the mother and father and family know about the effects of LSD, so that they become more informed than they can from the bits and pieces they read in the newspapers?

Dr. HARDMAN: Yes. This past week there have been two meetings: one meeting with Mr. MacEachen with the provincial ministers of health, and a meeting of the Dominion Council of Health, on Thursday and Friday last week, in which this problem and the legislation were discussed with the deputy ministers of health.

There is no formal mechanism for our department to consult departments of education, but we are providing to provincial departments of health the resources documents I spoke about, and I think it would be quite appropriate for us to suggest to the deputy ministers of health that they discuss it with their educational colleagues.

Senator CROLL: May I suggest to you that within a block from here, at the Chateau Laurier, you have had three or four hundred public health service people from all over the country who are knowledgeable and who work in this field. Should not someone have made a speech while they were here on this business of LSD, when you have these pigeons in front of you?

The CHAIRMAN: They could read Senate *Hansard*.

Senator CROLL: I am not too sure about that.

Dr. HARDMAN: I am not on the steering committee of the C.P.H.A. I am sure that as legislation comes in it will be a matter of major discussion. I agree with you legislation is only one side, and perhaps the smaller side, of the important educational program that has to be carried out at the national level.

The CHAIRMAN: But you have to have a base from which to operate.

Dr. HARDMAN: Yes.

Senator McDONALD (*Moosomin*): Could I ask Inspector Macauley one more question?

The CHAIRMAN: Yes.

Senator McDONALD (*Moosomin*): Some reference has been made to the so-called draft dodger coming into Canada from the United States. Is there any indication that these young people are bringing the drug into Canada, or is it being brought in by the professional dope pusher?

Inspector MACAULEY: I would say it is organized through the professional.

Senator McDONALD (*Moosomin*): Is there any indication the draft dodger is using LSD?

Inspector MACAULEY: I could not confirm or deny this, senator.

Senator MOLSON: Could I come back to the purpose of this bill? You are trying to control a situation, and in any product it seems to me there are three distinct phases:

there is the use of it; secondly, the sale of it; and, thirdly, the promotion of it. In any normally used product perhaps the greatest emphasis is placed on promotion. In this case we know there is some form of promotion going on. Would it not be possible in amending this act to make the promotion of these substances also an offence? This is actively happening. In fact, the television shown on some of these things showed a shot—and perhaps you saw it, Mr. Chairman—where they promoted the use of marijuana, LSD and other drugs. Surely, the promotion of these things should be an offence?

Dr. HARDMAN: Mr. Chairman, Senator Molson, there is a provision within the general act itself which defines a drug as a substance or material restoring, correcting or modifying organic functions in man and animals. We have not tested this in the courts, but it may be that we could under our present legislation take action against advertising because the general offence under the Food and Drugs Act is a contravention of the provision that no person shall advertise any food, drug, cosmetic or device to the general public as a treatment—

Senator McDONALD (*Moosomin*): Could we have that section?

Dr. HARDMAN: This in section 2 of the Act itself.

The CHAIRMAN: You are talking about the Food and Drugs Act?

Dr. HARDMAN: I am talking about the major Act.

The CHAIRMAN: The Food and Drugs Act?

Dr. HARDMAN: Yes, not the bill in front of you. The definition of a drug is contained in paragraph (f) of section 2, which reads:

"drug" includes any substance or mixture of substances manufactured, sold or represented for use in

(i) the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state, or the symptoms thereof, in man or animal,

(ii) restoring, correcting or modifying organic functions in man or animal—

So, our problem, as I see it, is that while we can prevent advertising of the drug it might be extremely difficult to prevent advertising of adjuvants to drug usage—such things as mood music or music to take LSD by, or hooker pipes. It is this type of thing that might be extremely difficult to control.

Senator MOLSON: You are talking about advertising, and I am talking about promotion. They are completely different things. The use of these drugs can be promoted without any advertising whatsoever, and the promoters are inciting people to use the drug. Why should not that be an offence?

Dr. HARDMAN: I do not know. I would say that this would be a very difficult thing to enforce, because promotion in this case is almost entirely by word of mouth, or by interpretation of a magazine or newspaper article. In presenting what they believe to be a fair side of the picture they may have the hazards at the end of the article and the delights at the start, and then it would be up to the courts to decide whether this is promotion or not. It is a very narrow definition, and we are looking for guidance in this.

Senator MOLSON: If you open a shop to sell accessories to the use of these things then surely that is not a narrow thing and hard to define.

Dr. HARDMAN: Well, the people who are doing this are claiming they are promoting the psychedelic experience. They are having group sessions, not unlike the meetings held by evangelists of previous times, at which they have flashing strobe lights, music, incense, and all of those appurtenances which they claim in themselves will promote the psychedelic experience. So, if legislation were brought forward to apply to this area, as you suggest, I can see that they would not even mention LSD in their promotion.

The CHAIRMAN: Dr. Hardman, it seems to me that you could in a very simple way cover what Senator Molson is talking about, and that is by simply enlarging the offence of trafficking to include promoting.

Senator MOLSON: Exactly.

Dr. HARDMAN: We are on to a legal point here, and I defer to the legal expert.

The CHAIRMAN: Let us hear from Mr. McCarthy. He is the legal adviser.

Senator KINLEY: Mr. Chairman, I want to ask a question.

The CHAIRMAN: We are going to get Mr. McCarthy's answer on the question that is already standing.

Mr. MCCARTHY: I think the answer to Senator Molson's question is: Yes, this could be provided for by an alteration of the definition of "trafficking". At the moment the definition of "trafficking" does not contemplate the sort of thing he has in mind.

The CHAIRMAN: Do you not think it should?

Mr. MCCARTHY: Well, it—

The CHAIRMAN: If it is a policy matter then do not answer.

Mr. MCCARTHY: I think, on the technical point, it could be done, Mr. Chairman. There is no provision in the Narcotic Control Act which attempts to do this sort of thing. There is no prohibition against this in respect of narcotics.

The CHAIRMAN: There should be.

Senator LEONARD: There is as to advertising, and that is a form of promotion, although Senator Molson's definition goes further than mere advertising. Would there be any great harm in your defining "trafficking" in section 41 itself by providing that no person shall traffic in or promote the traffic in—

Mr. MCCARTHY: I think, Mr. Chairman, it could be done, but we would have to define what we mean by "promotion".

The CHAIRMAN: Let the courts decide that?

Senator LEONARD: Would not this have a good effect so far as the kind of people who are experimenting are concerned. They may not be trafficking in this drug under the present definition, but they are experimenting and encouraging other people to experiment.

The CHAIRMAN: You might add the words "promote or encourage the use of".

Senator MOLSON: Would not that, for example, make the rather unattractive young man who went on television in the instance I am speaking of hesitate? Maybe it would have done a useful thing at that one point in time.

Mr. MCCARTHY: Again, I think the difficulty might be, sir, in determining whether or not he had done what the act would then prohibit.

Senator MOLSON: I am saying that perhaps he would not have then done what he did if he felt it would come under such a prohibition.

Senator CROLL: May I follow up that question and suggest that perhaps the C.B.C. would have hesitated to devote two half hours to this Project 67, or whatever it was, last year, when—

The CHAIRMAN: I am not sure of that, Senator. I think they might defend themselves on the basis that this is some type of dissemination of scientific knowledge.

Senator CROLL: Yes, but I used the word "hesitate". Do you not think they would have hesitated in respect of giving that sort of time, when the program might be construed as promotion.

Mr. MCCARTHY: I am not sure of what the C.B.C. might have thought under those circumstances.

The CHAIRMAN: I agree.

Mr. MCCARTHY: May I add one thing that I meant to add before as to why this is not made part of the Narcotic Control Act? It is a matter of the difference in penalty.

That is another matter. There are penalties now applicable to the organized and well established narcotic trade and trafficking which were thought not proper in this situation.

The CHAIRMAN: I gave Senator Kinley the next opportunity to ask a question.

Senator KINLEY: I think we are getting away from the provisions of this bill. I want to refer to section 45, and ask that it be clarified. Section 45 reads:

(1) The provisions of sections 36 and 37 apply in respect of this Part.

(2) For the purposes of subsection (1),

(a) there shall be substituted for the expression "controlled drug", wherever it appears in section 36 or 37, the expression "restricted drug"—

I would like an explanation of that on the record because there are many people who will read this and not know what it means.

The CHAIRMAN: This is in your field, Mr. McCarthy.

Mr. McCARTHY: Yes, sir. The Food and Drugs Act in sections 36 and 37 now contains provisions that are useful to the enforcement officers in respect to entering premises where they think a controlled drug is present, and making seizures. They contain other machinery for the claiming of these things, or the forfeiture of them. The provisions are rather similar to the provisions contained in the Narcotic Control Act. The question that the honourable gentleman has referred to simply picks up all of those provisions that are applicable to controlled drugs, and provides that they apply *mutatis mutandis* to restricted drugs.

Senator KINLEY: Is the discipline section applicable to both types of drugs?

Mr. McCARTHY: That is right.

Senator KINLEY: Let us go on a little further. Subsection (b) reads:

a reference in section 36 or 37

(i) to "Schedule G" shall be deemed to be a reference to Schedule J—

Schedule J contains a reference to this one drug alone. I think that thalidomide is mentioned in the other schedule, but I am not sure.

Mr. McCARTHY: But the text of the statute is that any reference to Schedule G shall be deemed to apply to Schedule J when it is enacted.

Senator KINLEY: I refer to subclause 3 of clause 45 of the bill, which says:

In addition to the regulations provided for by subsection (1), the Governor in Council may make regulations authorizing the possession or export of restricted drugs and prescribing the circumstances and conditions under which and the persons by whom restricted drugs may be had in possession or exported.

Have you any idea of what that order in council will be and who will be authorized the possession or export?

Mr. McCARTHY: Yes. I think that those who are legitimately to manufacture or use it in experimentation in proper institutions and in laboratories will be given the authority to do so.

Senator KINLEY: What about the doctors in the various provinces?

Mr. McCARTHY: I am not sure as to that.

Dr. HARDMAN: It is an extension of our present regulations. The present regulations provide for a manufacturer and provide for the supply of sales to an institution approved by the minister. This particular legislation which you are discussing, as I see it in operation, will issue a permit for distribution. It will not go through the normal trade channels, but to an institution in which research is carried out, such as with Dr. Hopper of Saskatchewan Hospital; he would apply for a licence to use the drug.

Senator KINLEY: Every hospital would have to have a licence?

Dr. HARDMAN: This is correct, sir. This drug should only ever be licensed in a carefully approved medical setting, and not in the home or in the office.

Senator KINLEY: Are these regulations going to be made by order in council?

Dr. HARDMAN: That is right.

The CHAIRMAN: This is an authority to make regulations as to those items. If you look at clause 40 you will see the wording "Except as authorized by this Part IV of the regulations," possession is an offence. By regulation, without coming back to Parliament, they can prescribe conditions under which you may be entitled to have possession.

Senator PROWSE: Referring to section 39(a), (b), (c) and (d), the definitions section, would there by any objection to adding an (e) in which "promotion" in trafficking could be defined?

The CHAIRMAN: But you see you would need both. To define something which is not dealt with as an offence does not mean anything. I would rather leave the word "promotion" to the widest possible meaning and let the courts interpret it.

Senator PROWSE: My objection is that there is provision for both indictment and procedures under the Summary Convictions Act. If it is by indictment, then of course the person has the opportunity of going to a superior court where presumably he has the advantage of having a man skilled in the law. However, magistrates are not in all instances lawyers. I have had experience, some of which I think is not unusual, particularly in the case of one who is beginning the practice of law, to appear in magistrate's court, and the magistrate has looked down at me, when I walked in the court with an array of books, and said, "I hope you are not going to waste my time with a lot of learning; we depend on plain common sense in this here court." This is the type of thing I am concerned with.

The CHAIRMAN: But there is always an appeal, senator.

Senator PROWSE: Mr. Chairman, nothing annoys me more, with all respect, than to hear that there is always an appeal, when we may be dealing with people who are students or who can hardly afford a lawyer to go into court, in the first instance; and even when we have provision in our Parliaments for public offenders, they may not provide that person with funds for an appeal. Lawyers get a little tired of bearing the expense themselves to carry a case to appeal. It is desirable that there should be as few appeals as possible.

The thing I have in mind is this. If there is any one person on the North American continent who is responsible for the widely irresponsible use of LSD which we hear of, it is surely a man by the name of Timothy Leary, who I understand has been indicted and convicted in the United States. But at the same time, there are people who for various reasons, it may be merely because of some psychological quirk of their own, do promote this, and do lead these young people to experiment in that area where angels would fear to tread.

I agree with Senator Molson's submission that the greatest damage that is being done in this particular area with these psychedelic drugs is not with the pusher of the type we know in the narcotics trade, but with the otherwise well-intentioned person or the damn fool who feels he has a responsibility to persuade people that this is one way to expand their minds, or perhaps to indulge their sense of adventure, and that if it is a danger it is a negligible danger on a percentage of bad effects basis. Now, if we can plug that hole, this is the time we should do it. Could it be done by adding a definition by a motion in the definition section, and then adding a penalty lower down?

Mr. MCCARTHY: Yes, I think it could be done in a couple of ways.

The CHAIRMAN: I wonder if I may interrupt to say that it has been suggested that we add another subsection in section 41, and that we renumber (2) as (3). The change suggested would be:

No person shall promote the use of a restricted drug or any substance represented or held out by him to be a restricted drug, otherwise than under the authority of this Part or the regulations.

Then by regulation they can provide within what limits you may promote.

Senator CROLL: Dr. Hardman said that a great deal of this goes on by a person inviting other persons to participate in a party—"come and have a drink with me, come and join a drinking party." Is that person promoting?

Senator LEONARD: Yes.

The CHAIRMAN: Yes.

Senator CROLL: You are getting into pretty thin territory.

Mr. HOPKINS: The courts will have to assign a meaning.

Mr. McCARTHY: I think that then you will also have to provide a penalty, because with each of these there is a particular penalty attached.

The CHAIRMAN: We could say that every person who violates subsections (1) and (2)—then subsection (2) would become (3), and (3) would become (4). We could say it applies to those who violate subsections (1), (2), or (3).

Mr. HOPKINS: He thinks it is too heavy.

Senator LEONARD: The lesser penalty.

Mr. HOPKINS: Then we have to put in another section providing the penalty.

Mr. McCARTHY: Regarding the penalty, there are different maximum penalties. If you are creating another offence, probably you should suggest the penalty for that.

Mr. HOPKINS: A lesser offence.

Senator LEONARD: It should be 18 months.

Mr. HOPKINS: You would say "every person who violates subsections (1), (2) or (3) is guilty of an offence."

The CHAIRMAN: Then you have a summary conviction penalty of up to 18 months, and on indictment up to ten years. I may be wrong in trying to be hard-boiled but in this field I would not want to feel we fail on severity. It took me a long time, in the case of the Narcotics Control Act, to get life imprisonment for this kind of traffic. It started much lower down and went to seven years. If you read the speeches I made in the Senate on it, you will see that I said we should not be nice with people who traffic and I would throw the full limit of the law at them.

Mr. McCARTHY: With respect, there will be the question of what is meant by promotion.

The CHAIRMAN: You can qualify it by regulation.

Mr. McCARTHY: That can be done.

Senator BURCHILL: I wish to refer back to a matter to which Senator Croll referred, that is, getting the attention of the public. I would ask Dr. Hardman if he does not think there is some merit in using the mass communication media, television, more in getting this information to the public.

Any time I have seen a display on television regarding this drug, it has been more to glamorize it dramatically than otherwise. It seems to me that television today is recognized as a great mass communication agency and it should be used to good effect in this case.

The CHAIRMAN: We have certainly called their attention to that vehicle, and it is now a matter of record.

Senator PROWSE: I wonder if this would meet what we have in mind. Take your suggestion of persons who engage in promotion, and then have a definition of promote. This leaves it wide enough to the court's discretion. Take:

"promote" means to invite or encourage by any means any person to use a restricted drug other than as provided in the regulations.

The CHAIRMAN: Senator Prowse has suggested a definition of "promote"—to invite or encourage by any means the use of a restricted drug.

Senator LEONARD: Should it not go further than merely the use—promoting the sale or trafficking?

Senator PROWSE: Yes.

The CHAIRMAN: Promote, in the sense in which Senator Molson raised the question, was much broader. He was tying it into trafficking as well.

Mr. HOPKINS: Yes, "or trafficking in".

Senator LEONARD: There may be some difficulty with respect to the actual wording.

The CHAIRMAN: That is why I wanted to leave it to the department, by regulation.

Senator PROWSE: How about "use or possession". This would include all of your definition of possession under the Code. That would be taken care of.

Mr. MCCARTHY: If the substance of what is intended by the committee were settled, probably this wording is something on which Mr. Thurm might have a word as to how it could be done.

The CHAIRMAN: Do you want to have a little time? We will be sitting in the Senate later this morning, but we can come back at 2 o'clock and deal with this particular paragraph.

Senator PROWSE: There is a meeting of the Committee on Finance at 2 o'clock.

The CHAIRMAN: It looks as though we are locked in for time.

Mr. MCCARTHY: I might add that this would probably entail an addition to the regulation-making section which would enable the governor in council to define this as well as the other things mentioned.

Senator CROLL: We will be through at 1.30 and we could finish by 2 o'clock.

The CHAIRMAN: See what you can do in the way of drafting in the meantime.

As to the other sections of the bill, there is actually only one section which gives me concern. That is the section which, in my view, puts the onus on the accused of proving that he is innocent. I know that Senator McDonald (Moosomin), the sponsor of the bill, made reference to the Ontario Court of Appeal decision in 1961. Justice Minister Fulton used this case at that time to support the introduction of this very provision in the Narcotics Control Act of 1961. I think it was a misapplication of the case, because that case was under the provision which prohibited, without lawful excuse, the possession of an explosive. The accused's lawyer pleaded the Bill of Rights, which says you cannot be deprived of your right, that you are innocent until proven guilty. The magistrate gave effect to it. The case went to the Court of Appeal in Ontario and the Court of Appeal in Ontario, by some sort of reasoning—I will not comment on it but I will take what they said. They said that the Crown proved evidence of possession and therefore the accused had a case to meet and this was different from saying that he was guilty unless he proved his innocence.

I have difficulty, in the circumstances, in following that reasoning. However, let us assume that it is sound and logical. It has to do with the question of possession—only.

What we have here is that a man may be charged with possession for the purpose of trafficking. Then the procedures following that are outlined here. It says when that comes to trial the court shall proceed first as though the man was charged with possession only, which is under another section in respect of which he has not been charged at all. The evidence is heard and the Crown adduces evidence. The accused has an opportunity to adduce evidence. If he does not adduce evidence, at that stage the magistrate says: "I convict this man of possession"—under the possession section, in respect of which he has not been charged. Then, if he makes that conviction, you hear the evidence as to whether it is for the purpose of trafficking. At this stage the accused will be called on to prove he was not trafficking. Let us assume that the accused at no time offers any evidence. Then what happens is, first of all, the Crown establishes possession, *prima facie*; the magistrate convicts him under the section under which he

has not been charged; then the magistrate calls upon him to prove he was not trafficking; the accused offers no evidence; then the conviction is under the section of possession for trafficking—and there is no evidence offered at all. If that is not making the accused prove his innocence, I do not know what is. I think there is another way in which it could be done, to accomplish the same result. All I wish to do is to call your attention to what this does—as to whether we want to fly in the face of the provisions in the Bill of Rights.

All I wanted to do was call your attention to what it does and to whether we want to fly in the face of provisions in the Bill of Rights and whether we feel that the offences involved here are so morally wrong that we weigh the public interest much more than we do the old doctrine that a person is presumed innocent until proven guilty.

Senator PROWSE: May I say, sir, that with all respect this is not without precedent in the law? For example, there is the principle of the law known as recent possession, where you charge a man with breaking and entering and the basis of the charge is that he is found to be in possession of recently stolen goods. Unless he can explain his possession of those goods he then is presumed to have stolen them and to have done the things that were done in the course of the theft.

The CHAIRMAN: You know, you are going right along the line of the exception that I made. I said I thought there was a way in which they could do this without running into the provisions of the Bill of Rights, and you have hit right upon it.

Senator PROWSE: Let us hear your suggestions before I argue the point, then.

The CHAIRMAN: I have made a draft, and here it is:

In any prosecution for a violation of subsection 2 of Section 41, if the evidence of possession, including the circumstances under which the accused was found in possession of the restricted drug, establishes in the judgment of the court a *prima facie* case that the accused was in possession of a restricted drug for the purpose of trafficking, the court shall so declare and then the accused shall be put upon his defence and if the accused offers no evidence or if the evidence offered by the accused in the judgment of the court does not refute such *prima facie* case the court shall thereupon convict the accused of the offence charged.

Now, this is exactly the point you are making on the question of recent possession, because if a man is found in possession say of an ounce of LSD, an ounce as we have had evidence here would provide for a quarter of a million trips.

Senator PROWSE: It would, sir.

The CHAIRMAN: Therefore the moment you find that combination of circumstances, he should be put upon his defence and that is parallel to your recent possession doctrine.

Senator PROWSE: Yes, but let me go further and say this: in this particular act the courts have had a lot of experience in the use of the Narcotics Control Act as it now stands and the Food and Drugs Act with the Section (j) under those circumstances, and I am speaking not from theory but from having prosecuted these cases. In the first instance, this judgment is made by the prosecutor to determine whether it is reasonable under the circumstances to determine whether the charge of trafficking ought to be laid or merely the charge of possession should be laid.

Remember this too, in our courts an accused has a lot of things going for him. I know this from my experience as a defence counsel in criminal cases. While there is a presumption set up by the court, all the accused needs to do to defeat that presumption is to raise a reasonable doubt, and, although I forget the names of the cases, they are readily obtainable, and this has been determined time and time again by the cases that the accused does not have to prove that his excuse is true. He does not have to prove his evidence. All he has to do is establish that the excuse he gives might reasonably be true.

This is a long way from putting a man in the position you are suggesting. May I respectfully suggest that if we now put a definition in this section which parallels the other, we can confuse the interpretations which are well established, and, because these are included in the same act, this could well take away from the previous sections the presumption of innocence which carries through and gives the prisoner the benefit of the doubt in the interpretation in the defence that is presently available to him under other sections of the act.

The CHAIRMAN: But the only place where the benefit of the doubt would occur would be if a man were charged with possession of narcotics or possession of LSD under this and then the Crown establishes a *prima facie* case of possession. The accused is then on his defence.

Senator PROWSE: Once the court says that it finds this man has been in possession of "X", then the accused is in the possession of it and he must give a reasonable explanation. He does not have to prove the truth of his explanation.

The CHAIRMAN: I was not suggesting that.

Senator PROWSE: I mean there is a point here in which the presumption of innocence carries over against the presumption under the way the law has been applied and the way it will be applied in this act at the present time. You are well aware of the principle of law which says that if in an act you say in particular a certain thing in a certain place and in another part of the act you do not say that, then we can have the effect by adding the presumption which you have here of taking away from him the presumption of innocence which acts to the benefit of the person in the other part of the act so that he is then faced with the necessity of having to prove his excuse and not merely present it.

The CHAIRMAN: Now, I think we are going to have to adjourn shortly to go into the Senate, and I intended to ask Mr. McCarthy and his advisor to consider this suggestion that I have made. I am not talking about this bill so far as it relates to the offence of possession. I am not talking about this bill so far as it relates to the offence of trafficking. I am talking about this bill only in respect of the third offence which it creates, which is being in possession for the purpose of trafficking. I am talking not about the presumption in that case but about the obligation on the accused to establish that he was not in possession for the purpose of trafficking. And I say that the Crown can gain every advantage without our having to violate a very old principle of law that the accused is innocent until he is proven guilty.

Senator PROWSE: Mr. Chairman, that very thing that appears here says that once you have established possession it shall be presumed that it is possession for the purpose of trafficking, and the person then must meet that allegation. That is presently in the act without this. This is in the act as it applies to both narcotics and controlled drugs at the present time.

The CHAIRMAN: But we could have different principles and different penalties and everything else in relation to restricted drugs.

Senator PROWSE: I think if you put this different principle in you are going to find you are affecting the other, and I say that at the present time this very stringent provision has been interpreted by the courts so as to give the accused a very reasonable and useful benefit of a continuing presumption of innocence.

In other words, while he has to meet a presumption, the requirements on him are very simple. All he has to do is to set up an excuse which might reasonably be true.

The CHAIRMAN: Let us assume that possession is proven under the charge of possession for the purpose of trafficking. If the man goes in the witness box after the judge has said, "I convict you of possession," what kind of defence can he offer then? The only one he can offer, as I see it, is, "Well, I am a drug addict. This was for my own use", and if the quantity were an ounce, do you think any judge would believe that?

Senator PROWSE: Let us take LSD and let us suppose it is an ounce and let us suppose it is the case of a university major in chemistry who has manufactured a quantity of it himself, which is the way most of the LSD presently being used in the universities is obtained. The explanation could well be that due to inexperience in dealing with quantities that are measurable he could not produce less than an ounce. This is a perfectly reasonable explanation, and I would think would be true.

The CHAIRMAN: Where we differ, senator, is only as to how to reach that goal. You seem to think that it is perfectly all right as long as the man is in a position where he can give evidence to show that while he may have been illegally in possession, he was not in possession for the purpose of trafficking. All I am saying is that I want to reach the same goal but not on the basis of violating a principle of long standing in the law, namely innocence until proven guilty. The procedure I have suggested would enable the same result, and we would not, first of all, be registering a conviction against a man for possession on which he has not been charged.

Senator PROWSE: He is always liable; there is always included in the major offence the included offences. How could he be trafficking in a drug unless he is in possession and has an element of control? It is the same with rape. A man charged with rape can find that there are six or nine included offences, without stretching it, and boring people with the details.

The CHAIRMAN: But a man can traffic without having statutory possession of the drug.

Senator PROWSE: I doubt it. He might promote it without being in possession, but I doubt if he could traffic.

The CHAIRMAN: Trafficking includes selling.

Senator PROWSE: But how can he sell without having it in his possession and being in a position to deliver?

The CHAIRMAN: We had cases covering this situation back in 1936 and 1937, and we put the men in jail. We never did trace any drug to these people, because they kept far, far away from it, but we convicted them.

Senator KINLEY: Senator Macdonald (Cape Breton) made a strong speech on the liberty of the subject in the house. He said that this legislation puts the liberty of the subject in the hands of the police and of the Government. And I think that is very important.

The CHAIRMAN: I would suggest that we adjourn until 1.30, and maybe we can get some further information on this question I have raised, as well as on the drafting.

Senator DESCHATELETS: Is it possible to find out if there is any jurisprudence on this? I ask that because this is identical to the provision in the legislation of 1961.

The committee adjourned until 1.30 p.m.

Upon resuming at 1.30 p.m.

The CHAIRMAN: I call the meeting to order. During the adjournment the departmental officials has considered the question of promotion as an offence and has redrafted section 41 so as to include that. While this draft includes what is presently in section 41. I will read it all so that the committee can follow it. It is proposed that this will replace the present section 41 in the bill. It reads as follows:

(1) No person shall traffic in a restricted drug or any substance represented or held out by him to be a restricted drug.

That is as it is at present.

(2) No person shall have in his possession any restricted drug for the purpose of trafficking.

That is the same as the present subsection 2.

(3) Except as authorized in this part or the regulations, no person shall promote the use of or trafficking in a restricted drug.

And subsection 4 goes on as it is in the bill.

In order to accommodate ourselves to the views expressed this morning with respect to some definition of "promotion" it is proposed that in section 45—this is to be found at the top of page 4 of the bill—the section be redrafted so that subsection 3 as it stands now becomes paragraph (a) of subsection 3, and there would be added a new paragraph (b) which would read as follows:

defining for the purposes of subsection (3) of section 41—

That is the one I read to you

—the word "promote" and prescribing the circumstances and conditions under which and the persons by whom the use of restricted drugs may be promoted.

In other words, this will put it up to the Department to provide by regulation the terms of the definition of the word "promote".

Now, these drafts, as drafts, have been prepared by the departmental authors, Mr. McCarthy, the legal counsel, and by Mr. Thurm of the Legislative Section of the Department of Justice. Is it agreeable to the committee that section 41 be struck out and that the new section 41 in the language I read be substituted?

Hon. SENATORS: Agreed.

The CHAIRMAN: It is also agreed that in connection with section 45 of the bill subsection (3) be struck out and that the new subsection take its place, in which the present subsection becomes paragraph (a), and then a paragraph (b) in which authority to provide for promoting, is added.

Senator CROLL: I so move.

The CHAIRMAN: This morning I raised the question of redrafting of section 42 on the question of the innocence of the accused until he is proven guilty. Since that time I have had an opportunity to consider this further, and also had further discussion with Senator Prowse, who was discussing it this morning. I have come to the conclusion that while I would feel happier with this section 42, because I think it more clearly expresses the procedures and assures the continuity of the principle of the innocence of the accused until he is proven guilty, yet when I looked at not only the decision of the Court of Appeal of Ontario, which was referred to this morning, in the *Regina v. Guertin* case, I looked at a later case of the Court of Appeal, which is exactly on the particular section of the Narcotic Control Act that deals with possession for the purposes of trafficking, and there this specific point was raised, that this was a violation of the provisions of the Bill of Rights, and that the accused person was being put in the position of having to prove his innocence. It would seem to me that the interpretation which the Court of Appeal in that case put on this section is in the form in which I was trying to write the section that I proposed this morning; and I have not that much pride in authorship to push this any further, when I find that the courts have already given an interpretation that is in line with my proposal. In view of the jurisprudence now existing, I do not think we should start out and do a piecemeal job. I think the minister should look at what we have proposed and decide whether it is a wise change for clarification in the circumstances.

Senator CROLL: I move the adoption of the bill.

Senator LEONARD: I second the motion, Mr. Chairman. However, I wish to say that I agree with what you said this morning; and in the light of what you say now I think it might be as well to put the later case to which you referred on the record of our proceedings, because other people could have the same idea in mind, and I think it will be just as well for them to know what this section means.

The CHAIRMAN: The case I referred to this morning was *Regina v. Guertin* (1961) Ontario Weekly Notes, and was a decision of the Court of Appeal. The later case is *Regina v. Sharpe* also a decision of the Court of Appeal in Ontario and reported in (1961) Ontario Reports. The personnel of the court was different, except that the Chief Justice presided in both cases. The late Mr. Justice Morden wrote the judgment and

gave an exhaustive review of the law on all these points. In those circumstances, I would be hesitant about pushing ahead, but would rather let the minister take the initiative if he feels that what we have said has some merit. We might also have an opportunity to review all these statutes and study the matter further.

Shall all the other sections of the bill carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill as amended?

Hon. SENATORS: Carried.

The committee adjourned.

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